

MAINE STATE LEGISLATURE

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3/18/10
R.A.S.

Date: 3/18/10

L.D. 1717
(Filing No. H-745)

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UTILITIES AND ENERGY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1218, L.D. 1717, Bill, "An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses"

Amend the bill by striking out all of the emergency preamble and inserting the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State has an aging housing stock that contributes to a high per capita consumption of oil; and

Whereas, weatherization and efficiency upgrades can dramatically reduce the amount of oil needed to heat a home or building; and

Whereas, state policy includes the following energy-related targets: weatherizing 100% of residences and 50% of businesses and reducing the State's consumption of liquid fossil fuels by at least 30% by 2030; reducing peak-load electric energy consumption by 100 megawatts and building stable private sector jobs providing clean energy and energy efficiency products and services in the State by 2020; and reducing greenhouse gas emissions from the heating and cooling of buildings in the State by amounts consistent with the State's goals established in the Maine Revised Statutes, Title 38, section 576; and

Whereas, the up-front costs of weatherization and efficiency upgrades keep homeowners and businesses from making such improvements; and

Whereas, on December 14, 2009 the State submitted a grant proposal to the United States Department of Energy seeking \$75,000,000 for a Retrofit Ramp-Up program that could be used to aggressively weatherize the State's housing stock; and

Whereas, the State's Retrofit Ramp-Up grant proposal relies, in part, upon property assessed clean energy, or PACE, financing, both for the deployment of federal grant proceeds and for subsequent leveraging of those funds; and

COMMITTEE AMENDMENT

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1 **Whereas**, the State's grant proposal will be substantially enhanced if the State
2 establishes a PACE financing program to finance weatherization and energy savings
3 improvements; and

4 **Whereas**, the State has a short summer construction season for implementing
5 weatherization and energy savings improvements; and

6 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
7 the meaning of the Constitution of Maine and require the following legislation as
8 immediately necessary for the preservation of the public peace, health and safety; now,
9 therefore,'

10 Amend the bill by striking out everything after the enacting clause and before the
11 summary and inserting the following:

12 'Sec. 1. 35-A MRSA c. 99 is enacted to read:

13 **CHAPTER 99**

14 **PROPERTY ASSESSED CLEAN ENERGY**

15 **§10151. Short title**

16 This chapter may be known and cited as "the Property Assessed Clean Energy Act"
17 or "the PACE Act."

18 **§10152. Declaration of public purpose**

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

21 **§10153. Definitions**

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

24 **1. Energy savings improvement.** "Energy savings improvement" means an
25 improvement to qualifying property that, as determined by the trust, is new and
26 permanently affixed to qualifying property and that:

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

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

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

34 B. Involves a renewable energy installation or an electric thermal storage system that
35 meets or exceeds standards established or approved by the trust.

36 **2. PACE agreement.** "PACE agreement" means an agreement that authorizes the
37 creation of a PACE mortgage on qualifying property and that is approved in writing by

1 all owners of the qualifying property at the time of the agreement, other than mortgage
2 holders.

3 **3. PACE assessment.** "PACE assessment" means an assessment made against
4 qualifying property to repay a PACE mortgage.

5 **4. PACE mortgage.** "PACE mortgage" means a mortgage securing a loan made
6 pursuant to a PACE program to fund energy savings improvements on qualifying
7 property.

8 **5. PACE ordinance.** "PACE ordinance" means an ordinance adopted by the
9 legislative body of a municipality for the purpose of participating in a PACE program.

10 **6. PACE program.** "PACE program" means a program established under this
11 chapter by the trust or a municipality under which property owners can finance energy
12 savings improvements on qualifying property.

13 **7. Qualifying property.** "Qualifying property" means real property located in a
14 municipality that participates in a PACE program pursuant to this chapter.

15 **8. Renewable energy installation.** "Renewable energy installation" means a fixture,
16 product, system, device or interacting group of devices installed behind the meter at a
17 qualifying property, or on contiguous property under common ownership, that produces
18 energy or heat from renewable sources, including, but not limited to, photovoltaic
19 systems, solar thermal systems, biomass systems, landfill gas to energy systems,
20 geothermal systems, wind systems, wood pellet systems and any other systems eligible
21 for funding under federal Qualified Energy Conservation Bonds or federal Clean
22 Renewable Energy Bonds.

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

24 **§10154. PACE programs**

25 **1. Establishment; funding.** The trust or a municipality that has adopted a PACE
26 ordinance may establish a PACE program funded by funds awarded to the State under the
27 federal Energy Efficiency and Conservation Block Grant Program or by any other funds
28 available for this purpose. Notwithstanding any other provision of law, after July 1, 2010,
29 the trust may use funds from its administrative fund or program funds to pay reasonable
30 administrative expenses of the trust or a municipality incurred to carry out the purposes of
31 this chapter.

32 **2. Program administration; municipal participation and liability.** A PACE
33 program must be administered as follows.

34 **A.** A municipality that has adopted a PACE ordinance may:

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

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

2. 2. 2.

1 B. The trust may enter into contracts with municipalities that have adopted PACE
2 ordinances to administer PACE program functions in such municipalities.

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

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

11 **3. Quality assurance system.** Subject to the availability of funds, the trust shall,
12 within 9 months of the establishment of a PACE program under subsection 1, adopt by
13 rule a comprehensive quality assurance system for the PACE program. In developing a
14 quality assurance system under this subsection, the trust must consult with industry
15 stakeholders, including, but not limited to, representatives of energy efficiency programs,
16 contractors and environmental, energy efficiency and labor organizations.

17 **4. Terms and conditions.** The trust may, by rule, establish terms and conditions
18 under which municipalities and property owners may participate in a PACE program
19 established under subsection 1, which may include, but are not limited to, terms and
20 conditions related to program design, implementation and administration, cost sharing,
21 collection of PACE assessments, establishment of PACE mortgages, recording of liens
22 and management of federal grant funds and terms and conditions to ensure the collection
23 of data required to quantify carbon savings and to facilitate access to and eligibility for
24 voluntary carbon markets, for federal grants for energy efficiency and for other incentive
25 programs that support energy savings improvements.

26 A. Rules adopted pursuant to this subsection may incorporate any federal standard,
27 quality control measure or other requirement established for federal energy efficiency
28 programs as long as the standard, measure or requirement is consistent with the
29 quality assurance system adopted under subsection 3.

30 B. The trust may vary the terms and conditions established under this subsection
31 applicable to a participating municipality from those of other participating
32 municipalities by mutual agreement with that municipality.

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

37 **§10155. Consumer underwriting and disclosure**

38 **1. Underwriting.** A PACE agreement entered into pursuant to a PACE program
39 must comply with underwriting requirements established by rule by the trust. In adopting
40 such rules, the trust shall seek advice from the Department of Professional and Financial
41 Regulation, Bureau of Consumer Credit Protection and consumer credit industry
42 stakeholders. Underwriting requirements established by the trust must, at a minimum:

1 A. Limit the amount of a PACE mortgage for qualifying property that is residential
2 property to \$15,000;

3 B. Require debt-to-income ratios of not more than 50% for qualifying property that
4 is residential property;

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

7 D. Require that financed energy savings improvements are cost-effective;

8 E. Require proof of ownership of the qualified property;

9 F. Require that the qualified property:

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

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

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

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

15 G. Require that the owner or owners of the qualified property certify that there are no
16 overdue payments on mortgages secured by the property; and

17 H. Require escrows for PACE assessment payments when appropriate.

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

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

30 **§10156. PACE mortgages; collection of PACE assessments; priority**

31 1. Collection of assessments. PACE assessments do not constitute a tax but may be
32 assessed and collected by the trust, a municipality or an agent designated by the trust or a
33 municipality in any manner allowed under the PACE program, consistent with applicable
34 laws.

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

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- 1 A. The amount of funds disbursed or to be disbursed pursuant to the PACE
- 2 agreement;
- 3 B. The names and addresses of the current owners of the qualifying property subject
- 4 to the PACE assessment;
- 5 C. A description of the property subject to the PACE assessment, including its tax
- 6 map and lot number;
- 7 D. The duration of the PACE agreement; and
- 8 E. The name and address of the entity filing the notice.

9 **3. Priority.** Except as provided in paragraph A, the priority of a PACE mortgage
 10 created under subsection 2 is determined based on the date of filing of notice required
 11 under subsection 2 and applicable law. A PACE mortgage is not entitled to any special
 12 or senior priority.

13 A. If a property owner's PACE assessment payments are current, upon the
 14 refinancing, sale or transfer of the qualifying property, other than a judicial sale or
 15 foreclosure, the PACE mortgage is junior and subordinate in priority to the first
 16 mortgage used to refinance an existing mortgage or a first mortgage of a subsequent
 17 purchaser or transferee, regardless of the date of the recording of the refinanced first
 18 mortgage or the first mortgage of the subsequent purchaser or transferee.

19 B. If a property owner's PACE assessment payments are delinquent, the past due
 20 assessments must be satisfied prior to or contemporaneously with the refinancing,
 21 sale or transfer of the qualifying property, other than a judicial sale or foreclosure.

22 **4. Judicial sale or foreclosure.** In the event of a judicial sale or foreclosure of a
 23 property subject to a PACE mortgage, all parties with mortgages or liens on that property,
 24 including without limitation PACE mortgagees, must receive on account of such
 25 mortgages or liens sale proceeds in accordance with the priority established by applicable
 26 law. Following a judicial sale or foreclosure, any deficiency with respect to amounts
 27 previously secured by a PACE mortgage must be satisfied from the reserve fund
 28 established under subsection 6.

29 **5. Release of mortgage.** A municipality shall discharge a PACE mortgage created
 30 under subsection 2 upon full payment of the amount specified in the PACE agreement.
 31 The discharge of a PACE mortgage under this subsection must be filed with the
 32 appropriate registry of deeds.

33 **6. Reserve fund.** The trust shall create a reserve fund to protect the trust in the event
 34 of a judicial sale or foreclosure of qualifying property subject to a PACE mortgage. The
 35 reserve fund may be funded by the trust using grant funds or interest charged on PACE
 36 mortgages. The reserve fund must be funded at a level sufficient to offset past due
 37 balances on PACE assessments and any remaining principal balances on those
 38 assessments, as reasonably predicted based on good lending practices.

39 **§10157. Property owners**

40 **1. Purchase of goods and services.** A property owner who has entered into a PACE
 41 agreement under this chapter may purchase directly all goods and services for the energy
 42 savings improvements described in the PACE agreement, subject to vendor certification

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1 by the trust and other requirements of the trust. Goods and services purchased by a
2 property owner for the energy savings improvements under a PACE agreement are not
3 subject to any public procurement ordinance or statute.

4 **2. Rights; carbon emissions reductions.** Property owners retain all rights under
5 contract or law against parties other than the municipality or the trust with respect to
6 energy savings improvements financed through PACE agreements, except that all rights
7 related to carbon emissions reductions resulting from those improvements are deemed to
8 be assigned by the property owner to the trust and are held by the trust.

9 **§10158. Annual report**

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

12 **§10159. Rulemaking**

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

15 **§10160. Construction; home rule**

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

18 **§10161. Construction; carbon emissions reductions**

19 Nothing in this chapter is intended to or may be construed to constitute a mandate
20 that would prevent the sale of carbon emissions reductions into a voluntary carbon
21 market.

22 **§10162. Conformity to changed standards**

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

28 **Sec. 2. Transition; Public Utilities Commission assistance.** Prior to July 1,
29 2010, the Efficiency Maine Trust may use funds allocated to the trust in Public Law
30 2009, chapter 372 to fund the trust's activities under the Maine Revised Statutes, Title
31 35-A, chapter 99. Until the trust has in place sufficient staffing resources to undertake its
32 responsibilities under Title 35-A, chapter 99, the Public Utilities Commission, at the
33 request of the Efficiency Maine Trust and within the limits of the commission's resources,
34 shall provide assistance to the trust in implementing Title 35-A, chapter 99.

35 **Sec. 3. Review; PACE program implementation and municipal funding**
36 **options.** The Efficiency Maine Trust shall convene a stakeholder group to review and
37 make recommendations regarding the implementation of PACE programs pursuant to the
38 Maine Revised Statutes, Title 35-A, chapter 99 and the development of and sources of
39 funding for municipally funded PACE programs. The review conducted under this
40 section must consider program features to ensure long-term energy savings, promote

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quality workmanship and otherwise contribute to achieving the state policy goal of weatherizing 100% of residences and 50% of businesses by 2030. The review must include, but is not limited to:

1. An examination of the PACE program implementation experience, including program participation and barriers to participation, types of energy savings improvements financed, quality assurance issues, adequacy of consumer and lender protections and the roles of the Efficiency Maine Trust and municipalities; and

2. Funding sources and options for municipally funded programs, including, but not limited to, municipal bonding and private capital markets. The review must consider:

A. Available sources of funding for municipalities in addition to the federal Energy Efficiency and Conservation Block Grant Program and appropriate methods for a municipality to approve the use of such sources;

B. Program features that would maximize the opportunities for accessing the private capital markets for long-term sustainable financing, including measurement and verification of energy savings; heightened lien priority consistent with the public purpose of a contractual assessment program; establishment of reserve funds; and reasonable limitations on the size of loans and types of eligible projects;

C. Approaches for independently managing municipally funded programs through one or more 3rd-party administrators that can provide support for multiple participating municipalities;

D. Measures to limit the liability of any municipality, municipal official or municipal employee involved in a municipally funded program;

E. Standard contracts, ordinances and other documents that may be useful in facilitating the implementation of contractual assessment programs; and

F. Proper allocation of the costs of administering contractual assessment programs, including loan origination fees, municipal administrative expenses and any reasonable expenses incurred by the Efficiency Maine Trust for the oversight or support of such programs.

Sec. 4. Interim and final reports; authority for legislation. No later than March 1, 2011, the Efficiency Maine Trust shall submit an interim report of the findings and recommendations, including any suggested draft legislation, under section 3 to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. Following receipt of the interim report, the joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit a bill related to the report to the First Regular Session of the 125th Legislature.

No later than January 30, 2012, the Efficiency Maine Trust shall submit a final report of the findings and recommendations, including any suggested draft legislation, under section 3 to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. Following receipt of the final report, the joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit a bill related to the report to the Second Regular Session of the 125th Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.'

H. 63

SUMMARY

1
2 This amendment replaces the bill. The amendment does the following.

3 1. It enacts the Property Assessed Clean Energy Act, or PACE Act, which authorizes
4 the Efficiency Maine Trust and municipalities to establish property assessed clean energy
5 programs, referred to as PACE programs, under which property owners may voluntarily
6 finance energy savings improvements on qualifying property through a specific
7 mortgage, called a PACE mortgage, and repay that mortgage through an assessment on
8 the property, called a PACE assessment. The terms of the mortgage and assessment
9 would be spelled out in an agreement, called a PACE agreement.

10 2. It specifies that funding for the PACE programs may be provided from the federal
11 Energy Efficiency and Conservation Block Grant Program or any other funds available to
12 the trust for this purpose.

13 3. It permits a municipality that has adopted a PACE ordinance to administer a
14 PACE program, including, but not limited to, entering into PACE agreements with
15 property owners and collecting PACE assessments. It also permits a municipality that has
16 adopted a PACE ordinance to enter into a contract with the trust to administer some or all
17 functions of the PACE program for the municipality and authorizes the trust to enter into
18 contracts with municipalities for that purpose.

19 4. It requires the trust to establish a comprehensive quality assurance system within 9
20 months of establishing a PACE program and to develop model documents and
21 educational materials for use by municipalities in the implementation of PACE programs.
22 The amendment permits the trust to establish terms and conditions under which
23 municipalities and property owners may participate in a PACE program.

24 5. It requires any PACE agreement entered into pursuant to a PACE program to
25 comply with underwriting requirements established by rule by the trust and to provide
26 consumer disclosure that is consistent with the principles of truth in lending as specified
27 by rule. In developing these rules, the trust is required to seek advice from the
28 Department of Professional and Financial Regulation, Bureau of Consumer Credit
29 Protection and consumer credit industry stakeholders and specifies certain minimum
30 underwriting requirements that must be included. It also specifies that the privacy
31 provisions of the federal Gramm-Leach-Bliley Act apply to all consumer financial
32 information obtained by the trust or municipalities in implementing PACE programs.

33 6. It specifies that a PACE assessment is not a tax but may be assessed and collected
34 by the trust, a municipality or a designated agent.

35 7. It requires that notice of a PACE agreement be filed in the appropriate registry of
36 deeds and specifies that filing of this notice creates a PACE mortgage against the
37 property. It also specifies minimum requirements for the notice.

38 8. It specifies that the priority of a PACE mortgage is determined by the date of
39 filing of the notice and that a PACE mortgage is not entitled to any special or senior
40 priority.

41 9. It requires the trust to create a reserve fund to protect the trust in the event of a
42 judicial sale or foreclosure on property subject to a PACE mortgage.

R. 10. 3.

COMMITTEE AMENDMENT "A" to H.P. 1218, L.D. 1717

- 1 10. It requires the trust to report annually on the implementation of PACE programs
- 2 and related provisions of law.
- 3 11. It specifies that until the trust has sufficient staffing resources to undertake its
- 4 responsibilities under the PACE Act, the Public Utilities Commission, at the request of
- 5 the trust, shall provide assistance to the trust in administering the PACE Act within the
- 6 limits of the commission's resources.
- 7 12. It requires the trust to convene a stakeholder group to review and make
- 8 recommendations regarding the implementation of PACE programs pursuant to the
- 9 PACE Act and the development of and sources of funding for municipally funded PACE
- 10 programs, including but not limited to municipal bonding and private capital markets.
- 11 The review must consider program features to ensure long-term energy savings, promote
- 12 quality workmanship and otherwise contribute to achieving the state policy goal of
- 13 weatherizing 100% of homes and 50% of businesses by 2030. It requires the trust to
- 14 submit an interim report on the findings and recommendations of the stakeholder group to
- 15 the joint standing committee of the Legislature having jurisdiction over utilities and
- 16 energy matters no later March 1, 2011 and a final report no later than January 30, 2012.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



124th MAINE LEGISLATURE

LD 1717

LR 2459(02)

An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Utilities and Energy
Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

This bill establishes a property assessed clean energy ("PACE") program to be administered by the Efficiency Maine Trust (EMT) for municipalities that adopt an enabling ordinance and choose to participate in the program. Under PACE agreements with municipalities individual property owners can borrow to finance energy-saving improvements on qualifying property. PACE agreements are to be administered by the EMT, which is not to be a party to those agreements. All PACE agreements must comply with underwriting requirements established by the EMT. The EMT will collect PACE assessments if the municipality is not so engaged. The EMT will also prepare model ordinances, perform a quality assurance function in consultation with various industry stakeholders, prepare educational materials, make rules, establish and operate a Reserve Fund to protect against default on "PACE mortgages" and report annually on administration of the PACE program.

Many of the above activities are made subject to the availability of funds, specifically funding from a pending federal grant or similar future grants and the EMT retains the discretion under this bill to use its administrative or program funds to cover the costs thereof. Owing to the substantial resources available to the EMT to commence its operations, no General Fund impact is anticipated at this time.

Any additional costs to the Bureau of Consumer Credit Protection in the Department of Professional and Financial Regulation are expected to be minor and can be absorbed utilizing existing budgeted resources.