

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

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Legislative Document

No. 340

S.P. 147

In Senate, February 8, 2021

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

Received by the Secretary of the Senate on February 4, 2021. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 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 of Cumberland.
Cosponsored by Representative KESSLER of South Portland and
Senators: LUCHINI of Hancock, MIRAMANT of Knox, Representatives: BERRY of
Bowdoinham, CAIAZZO of Scarborough, DOUDERA of Camden, GROHOSKI of Ellsworth.

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

22 **5. Commercial PACE ordinance.** "Commercial PACE ordinance" means an
23 ordinance adopted by the legislative body of a municipality for the purpose of participating
24 in a commercial PACE program.

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

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

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

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

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

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

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

9 A. Does not have a residential mortgage;

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

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

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

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

17 **9. Renewable energy installation.** "Renewable energy installation" means a fixture,
18 product, system, device or interacting group of devices installed behind the meter at a
19 qualifying property, or on contiguous property under common ownership, that produces
20 energy or heat from renewable sources, including, but not limited to, photovoltaic systems,
21 solar thermal systems, highly efficient wood heating systems, geothermal systems and wind
22 systems that do not on average generate more energy or heat than the peak demand of the
23 property.

24 **10. Trust.** "Trust" means the Efficiency Maine Trust established in section 10103.

25 **§10203. Commercial PACE programs**

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

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

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

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

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

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

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

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

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

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

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

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

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

41 A commercial PACE assessment may be used to secure financing for the construction of a
42 new building or facility. Financing secured by a commercial PACE assessment for the
43 construction of a new building or facility must be used for energy savings improvements
44 on the property that significantly exceed the energy standards of the Maine Uniform

1 Building and Energy Code, adopted pursuant to Title 10, section 9722, subsection 6,
2 paragraph B, or the applicable energy code in the municipality where the project is located,
3 as determined by the trust. A lender under this chapter may disburse funds for new
4 construction projects before project completion.

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

9 **§10204. Underwriting**

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

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

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

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

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

23 E. Require that the qualifying property's assessment-to-value ratio be no greater than
24 0.35;

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

26 G. Require that the qualifying property:

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

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

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

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

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

34 **§10205. Commercial PACE assessments; collection; priority**

35 **1. Collection of assessments.** A lender providing financing under a commercial
36 PACE program has a lien on the qualifying property to secure the payment of an unpaid
37 commercial PACE assessment. A lien resulting from a commercial PACE assessment on
38 the qualifying property must be assessed and collected by the trust, a 3rd-party
39 administrator contracted by the trust, a municipality or an agent designated by the trust or
40 a municipality in any manner allowed under the commercial PACE program, consistent
41 with applicable laws. If the trust or a 3rd-party administrator contracted by the trust collects

1 commercial PACE assessments on behalf of a municipality, the trust shall periodically
2 report to the municipality on the status of the commercial PACE assessments in the
3 municipality and shall notify the municipality immediately of any delinquent commercial
4 PACE assessments. Upon receiving notification from the trust of a delinquent commercial
5 PACE assessment, a municipality shall notify the holder of any mortgage on the property
6 of the delinquent assessment.

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

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

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

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

18 D. The duration of the commercial PACE agreement;

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

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

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

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

43 **5. Collection, default and foreclosure.** A commercial PACE assessment for which
44 notice is properly recorded under this section creates a lien on the property. The portion of

1 the assessment that has not yet become due is not eliminated by foreclosure, and the lien
2 may not be accelerated or extinguished until fully repaid.

3 A lien created by a commercial PACE assessment recorded in the registry of deeds and any
4 interest, fees, penalties and attorney's fees incurred in its collection must be collected in the
5 same manner as the real property taxes of the municipality in which the property is located.
6 If a commercial PACE assessment is delinquent or in default, collection may occur only
7 by the recording of liens and by foreclosure under Title 36, sections 942 and 943. Liens
8 must be recorded and released in the same manner as liens for real property taxes.

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

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

24 **7. Release of lien.** A municipality shall discharge a commercial PACE lien created
25 under subsection 2 upon full payment of the amount specified in the commercial PACE
26 agreement. A discharge under this subsection must be filed in the appropriate registry of
27 deeds and must include reference to the notice required under subsection 2.

28 **§10206. Commercial property owners**

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

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

39 **§10207. Annual report**

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

42 **§10208. Rulemaking**

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

3 **§10209. Construction; home rule**

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

6 **§10210. Conformity to changed standards**

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

12 **SUMMARY**

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