

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Date: (Filing No. S-)

ENERGY, UTILITIES AND TECHNOLOGY

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 147, L.D. 340, “An Act To Allow for the Establishment of Commercial Property Assessed Clean Energy Programs”

Amend the bill in section 1 in c. 101 in §10204 in subsection 1 in paragraph E in the first line (page 4, line 23 in L.D.) by inserting after the following: "property's" the following: 'commercial PACE'

Amend the bill in section 1 in c. 101 in §10204 in subsection 1 in paragraph G by striking out all of subparagraph (1) (page 4, line 27 in L.D.) and inserting the following:

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

Amend the bill in section 1 in c. 101 in §10204 in subsection 1 in paragraph G by striking out all of subparagraph (2) (page 4, line 28 in L.D.) and inserting the following:

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

Amend the bill in section 1 in c. 101 in §10205 by striking out all of subsection 1 (page 4, lines 35 to 41 and page 5, lines 1 to 6 in L.D.) and inserting the following:

'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.'

COMMITTEE AMENDMENT

1 Amend the bill in section 1 in c. 101 in §10205 by striking out all of subsection 3 (page
2 5, lines 22 to 31 in L.D.) and inserting the following:

3 **'3. Priority.** A commercial PACE lien secures payment for any unpaid commercial
4 PACE assessment and, together with all associated interest and penalties for default and
5 associated attorney's fees and collection costs, takes precedence over all other liens or
6 encumbrances except a lien for real property taxes of the municipality and liens of
7 municipal sewer, sanitary and water districts. From the date of recording, a commercial
8 PACE lien is a priority lien against a property, subject only to liens set out in section 6111-
9 A, Title 36, section 552 and Title 38, sections 1050 and 1208, except that the priority of
10 such a commercial PACE lien over any lien, except a lien for real property taxes of the
11 municipality or a lien of a municipal sewer, sanitary or water district, that existed prior to
12 the commercial PACE lien is subject to the written consent of such existing lienholder.'

13 Amend the bill in section 1 in c. 101 in §10205 by striking out all of subsection 4 (page
14 5, lines 32 to 42 in L.D.) and inserting the following:

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

28 A. Of the priority status provided to commercial PACE liens pursuant to subsection 3;

29 B. Of the foreclosure process applicable to properties subject to commercial PACE
30 liens under subsection 5; and

31 C. That the financial institution is not required to but has voluntarily elected to consent
32 to the enrollment of the property in the commercial PACE program.'

33 Amend the bill in section 1 in c. 101 in §10205 in subsection 5 by striking out all of
34 the first blocked paragraph (page 6, lines 3 to 8 in L.D.) and inserting the following:

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

42 Amend the bill in section 1 in c. 101 in §10205 in subsection 5 by inserting after the
43 first blocked paragraph the following:

1 'If only a commercial PACE assessment is delinquent but the borrower or property owner
2 is current on payment of all municipal taxes due to the participating municipality, then a
3 commercial PACE lienholder shall accept an assignment of the commercial PACE lien, as
4 provided in the written agreement between the participating municipality and the
5 commercial PACE lender. The assignee shall have and possess all the same powers and
6 rights at law as the participating municipality and its tax collector with regards to the
7 priority of the commercial PACE lien, the accrual of interest and fees and the costs of
8 collection. The assignee shall have the same rights to enforce the commercial PACE lien
9 as any private party or lender holding a lien on real property, including, but not limited to,
10 the right of foreclosure consistent with Title 14, sections 6203-A and 6321 and any other
11 action in contract or lawsuit for the enforcement of the commercial PACE lien. The
12 assignee shall recover costs and reasonable attorney's fees incurred as a result of any
13 foreclosure action or other legal proceeding brought pursuant to this subsection, which may
14 be collected by the assignee at any time after the assignee has made demand for payment.'

15 Amend the bill in section 1 in c. 101 in §10205 by striking out all of subsection 6 (page
16 6, lines 9 to 23 in L.D.) and inserting the following:

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

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

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

34 SUMMARY

35 This amendment, which is the majority report of the committee, amends the bill as
36 follows.

37 1. It provides that the written consent of a financial institution holding a lien, mortgage
38 or security interest in or other collateral encumbrance on a property for which a commercial
39 PACE assessment is sought, which must be filed with the registry of deeds, must also
40 include a written acknowledgement and understanding by the financial institution
41 regarding the priority status provided to commercial PACE liens, the sale or foreclosure
42 process applicable to commercial PACE liens and the financial institution's voluntary
43 consent to the enrollment of the subject property in the commercial PACE program.

- 1 2. It specifies that, in the event a commercial PACE assessment is delinquent but the
2 borrower or property owner is otherwise current on payment of all municipal taxes due to
3 the municipality offering the commercial PACE program the property is enrolled in, then
4 a commercial PACE lienholder must accept from the municipality an assignment of the
5 commercial PACE lien. Following that assignment, the commercial PACE lienholder has
6 and possesses all the same powers and rights at law as the municipality and its tax collector
7 with regards to the commercial PACE lien, including the right to enforce the lien through
8 foreclosure.
- 9 3. It makes a number of additional, technical changes and clarifications to the bill.