CHAPTER 99

PROPERTY ASSESSED CLEAN ENERGY

§10151. Short title

This chapter may be known and cited as "the Property Assessed Clean Energy Act" or "the PACE Act." [PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10152. Declaration of public purpose

It is declared that the establishment and implementation of property assessed clean energy, or PACE, programs to finance energy savings improvements are public purposes. [PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10153. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2009, c. 591, §1 (NEW).]

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

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

(1) Meets or exceeds 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) Involves weatherization of residential, commercial or industrial property in a manner approved by the trust; or [PL 2009, c. 591, §1 (NEW).]

B. Involves a renewable energy installation, an electric thermal storage system or any heating equipment that meets or exceeds standards established or approved by the trust. [PL 2011, c. 84, §1 (AMD).]

[PL 2011, c. 84, §1 (AMD).]

2. PACE agreement. "PACE agreement" means an agreement that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.
[PL 2009, c. 591, §1 (NEW).]

3. PACE assessment. "PACE assessment" means an assessment made against qualifying property to repay a PACE mortgage.
[PL 2009, c. 591, §1 (NEW).]

4. PACE mortgage. "PACE mortgage" means a mortgage securing a loan made pursuant to a PACE program to fund energy savings improvements on qualifying property.
[PL 2009, c. 591, §1 (NEW).]

5. PACE ordinance. "PACE ordinance" means an ordinance adopted by the legislative body of a municipality for the purpose of participating in a PACE program.
[PL 2009, c. 591, §1 (NEW).]

6. PACE program. "PACE program" means a program established under this chapter by the trust or a municipality under which property owners can finance energy savings improvements on qualifying property.
[PL 2009, c. 591, §1 (NEW).]

7. Qualifying property. "Qualifying property" means real property located in a municipality that participates in a PACE program pursuant to this chapter.
[PL 2009, c. 591, §1 (NEW).]

8. 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, biomass systems including but not limited to masonry stoves and wood pellet systems, landfill gas to energy systems, geothermal systems, wind systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.
[PL 2013, c. 157, §1 (AMD).]

9. Trust. "Trust" means the Efficiency Maine Trust established in section 10103.
[PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW). PL 2011, c. 84, §1 (AMD). PL 2013, c. 157, §1 (AMD).

§10154. PACE programs

1. Establishment; funding. The trust or a municipality that has adopted a PACE ordinance may establish a PACE program funded by funds awarded to the State under the federal Energy Efficiency and Conservation Block Grant Program or by any other funds available for this purpose. Notwithstanding any other provision of law, after July 1, 2010, the trust may use funds from its administrative fund or program funds to pay reasonable administrative expenses of the trust or a municipality incurred to carry out the purposes of this chapter.
[PL 2009, c. 591, §1 (NEW).]

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

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

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

(2) Enter into a contract with the trust to administer some or all functions of the PACE program for the municipality. [PL 2009, c. 591, §1 (NEW).]

B. The trust may enter into contracts with municipalities that have adopted PACE ordinances to administer PACE program functions in such municipalities. [PL 2009, c. 591, §1 (NEW).]

C. Notwithstanding any other provision of law to the contrary, 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 PACE program established under subsection 1, including, without limitation, claims for or related to uncollected PACE assessments. [PL 2009, c. 591, §1 (NEW).]

D. Other than the fulfillment of its obligations specified in a PACE agreement, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program. [PL 2009, c. 591, §1 (NEW).]

[PL 2009, c. 591, §1 (NEW).]

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

[PL 2009, c. 591, §1 (NEW).]

4. Terms and conditions. The trust may, by rule, establish terms and conditions under which municipalities and property owners may participate in a 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 PACE assessments, establishment of PACE mortgages, recording of liens and management of federal grant funds and terms and conditions to ensure the collection of data required to quantify carbon savings and to facilitate access to and eligibility for voluntary carbon markets, for federal grants for energy efficiency and for other incentive programs that support energy savings improvements.

A. Rules adopted pursuant to this subsection may incorporate any federal standard, quality control measure or other requirement established for federal energy efficiency programs as long as the standard, measure or requirement is consistent with the quality assurance system adopted under subsection 3. [PL 2009, c. 591, §1 (NEW).]

B. 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. [PL 2009, c. 591, §1 (NEW).]

[PL 2009, c. 591, §1 (NEW).]

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

[PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10155. Consumer underwriting and disclosure

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

A. Limit the amount of a PACE mortgage for qualifying property that is residential property to $15,000; [PL 2009, c. 591, §1 (NEW).]

B. Require debt-to-income ratios of not more than 50% for qualifying property that is residential property; [PL 2009, c. 591, §1 (NEW).]

C. Provide that the term of the PACE agreement not exceed the estimated useful life of the financed energy savings improvements; [PL 2009, c. 591, §1 (NEW).]

D. Require that financed energy savings improvements are cost-effective; [PL 2009, c. 591, §1 (NEW).]

E. Require proof of ownership of the qualified property; [PL 2009, c. 591, §1 (NEW).]

F. Require that the qualified property:

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

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

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

(4) Is not subject to a mortgage or other lien on which there is a recorded notice of default, foreclosure or delinquency that has not been cured; [PL 2009, c. 591, §1 (NEW).]

G. Require that the owner or owners of the qualified property certify that there are no overdue payments on mortgages secured by the property; and [PL 2009, c. 591, §1 (NEW).]

H. Require escrows for PACE assessment payments when appropriate. [PL 2009, c. 591, §1 (NEW).]

[PL 2009, c. 591, §1 (NEW).]

2. Consumer disclosure; truth in lending. A PACE agreement entered into pursuant to a PACE program must provide consumer disclosure consistent with the principles of truth in lending as specified in rules adopted by the trust. In adopting such rules, the trust shall seek advice from the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection and consumer credit industry stakeholders. Notwithstanding Title 9-A, section 1-202, PACE mortgages are not subject to the Maine Consumer Credit Code, Article 8-A.
[PL 2011, c. 427, Pt. D, §25 (AMD).]

3. Consumer privacy. The provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999), and the applicable implementing federal regulations regarding the privacy of consumer information, apply to all consumer financial information obtained by the trust or municipalities or their designees in implementing PACE programs under this chapter.
[PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW). PL 2011, c. 427, Pt. D, §25 (AMD).

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

1. Collection of assessments. PACE assessments do not constitute a tax but may be assessed and collected by the trust, a municipality or an agent designated by the trust or a municipality in any manner allowed under the PACE program, consistent with applicable laws.
[PL 2009, c. 591, §1 (NEW).]

2. Notice; filing. A notice of a PACE agreement must be filed in the appropriate registry of deeds. The filing of this notice creates a PACE mortgage against the property subject to the PACE assessment until the amounts due under the terms of the 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 PACE agreement; [PL 2009, c. 591, §1 (NEW).]

B. The names and addresses of the current owners of the qualifying property subject to the PACE assessment; [PL 2009, c. 591, §1 (NEW).]

C. A description of the property subject to the PACE assessment, including its tax map and lot number; [PL 2009, c. 591, §1 (NEW).]

D. The duration of the PACE agreement; and [PL 2009, c. 591, §1 (NEW).]

E. The name and address of the entity filing the notice. [PL 2009, c. 591, §1 (NEW).]
[PL 2009, c. 591, §1 (NEW).]

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

A. If a property owner's PACE assessment payments are current, upon the refinancing, sale or transfer of the qualifying property, other than a judicial sale or foreclosure, the PACE mortgage is junior and subordinate in priority to the first mortgage used to refinance an existing mortgage or a first mortgage of a subsequent purchaser or transferee, regardless of the date of the recording of the refinanced first mortgage or the first mortgage of the subsequent purchaser or transferee. [PL 2009, c. 591, §1 (NEW).]

B. If a property owner's PACE assessment payments are delinquent, the past due assessments must be satisfied prior to or contemporaneously with the refinancing, sale or transfer of the qualifying property, other than a judicial sale or foreclosure. [PL 2009, c. 591, §1 (NEW).]
[PL 2009, c. 591, §1 (NEW).]

4. Judicial sale or foreclosure. In the event of a judicial sale or foreclosure of a property subject to a PACE mortgage, all parties with mortgages or liens on that property, including without limitation PACE mortgagees, must receive on account of such mortgages or liens sale proceeds in accordance with the priority established by applicable law. Following a judicial sale or foreclosure, any deficiency with respect to amounts previously secured by a PACE mortgage must be satisfied from the reserve fund established under subsection 6.
[PL 2009, c. 591, §1 (NEW).]

5. Release of mortgage. A municipality shall discharge a PACE mortgage created under subsection 2 upon full payment of the amount specified in the PACE agreement. The discharge of a PACE mortgage under this subsection must be filed with the appropriate registry of deeds.
[PL 2009, c. 591, §1 (NEW).]

6. Reserve fund. The trust shall create a reserve fund to protect the trust in the event of a judicial sale or foreclosure of qualifying property subject to a PACE mortgage. The reserve fund may be funded by the trust using grant funds or interest charged on PACE mortgages. The reserve fund must be funded at a level sufficient to offset past due balances on PACE assessments and any remaining principal balances on those assessments, as reasonably predicted based on good lending practices.
[PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10157. Property owners

1. Purchase of goods and services. A property owner who has entered into a PACE agreement under this chapter may purchase directly all goods and services for the energy savings improvements described in the PACE agreement, subject to vendor certification by the trust and other requirements of the trust. Goods and services purchased by a property owner for the energy savings improvements under a PACE agreement are not subject to any public procurement ordinance or statute.
[PL 2009, c. 591, §1 (NEW).]

2. Rights; carbon emissions reductions. 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 PACE agreements, except that all rights related to carbon emissions reductions

resulting from those improvements are deemed to be assigned by the property owner to the trust and are held by the trust.
[PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10158. Annual report

The trust shall report annually on the implementation of this chapter as part of the report required under section 10104, subsection 5. [PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10159. Rulemaking

Rules adopted under this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10160. Construction; home rule

Nothing in this chapter may be construed to limit the home rule authority of a municipality. [PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10161. Construction; carbon emissions reductions

Nothing in this chapter is intended to or may be construed to constitute a mandate that would prevent the sale of carbon emissions reductions into a voluntary carbon market. [PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

§10162. Conformity to changed standards

If standards are adopted by any state or federal agency subsequent to a municipality's adoption of a PACE ordinance or participation in a PACE program and those standards substantially conflict with the municipality's manner of participation in the PACE program, the municipality shall take necessary steps to conform its participation to those standards. [PL 2009, c. 591, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 591, §1 (NEW).

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