

HOUSE No. 4006

Section 12 contained in the engrossed Bill making appropriations for the fiscal year 2022 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (see House, No. 4002), which had been returned by His Excellency the Governor with recommendation of amendment (for message see Attachment F of House, No. 4019). July 22, 2021.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to alternative compliance payment liens.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for alternative compliance payment liens, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 25A of the General Laws is hereby amended by adding the
2 following section:-

3 Section 18. (a) Upon issuance by the department of a notice of non-compliance, any
4 alternative compliance payment, as defined in 225 CMR 14.02, owed by a retail electric supplier
5 pursuant to sections 11F, 11F1/2 and 17, including any interest, additional amount, addition to
6 debt or assessable penalty under section 7, together with any costs that may accrue in addition
7 thereto, shall constitute a debt to the department. Such debt shall also be a lien in favor of the
8 department upon all property and rights to property, whether real or personal, belonging to the

9 indebted retail electric supplier. The lien shall arise 30 days after the department issues the first
10 notice of non-compliance and shall continue until: (1) the debt is satisfied; (2) a judgment against
11 the retail electric supplier arising out of such debt is satisfied; (3) any such debt or judgment is
12 discharged by the department by a waiver or release under subsection (d); or (4) any such debt or
13 judgment becomes unenforceable by reason of the lapse of time. The lien created in favor of the
14 department for any such alternative compliance payment shall remain in effect for a period of 10
15 years after issuance of the notice of non-compliance. For a bankruptcy case under the United
16 States Code, the running of the period of limitations in this section shall be suspended for: (i) the
17 period during which the department is prohibited by reason of such case from collecting the lien
18 and (ii) the period during which a plan for payment of the lien is in effect and 6 months
19 thereafter. The running of the period of limitations in this section shall be suspended for the
20 period during which the payment or collection is stayed pursuant to the retail electric supplier
21 contesting the lien. If the lien would extend beyond its initial or any subsequent 10-year period,
22 the department may refile its notice of lien. If any such notice of lien is refiled within the
23 required refiling period, as defined in section 6323(g)(3) of the Internal Revenue Code, the lien
24 in favor of the department shall relate back to the date of the first such lien filing. The
25 department shall promulgate such regulations as may be necessary for the implementation of this
26 subsection.

27 (b) A lien imposed by this section shall not be perfected as against any mortgagee,
28 pledgee, purchaser, creditor or judgment creditor until notice thereof has been filed by the
29 department:

30 (1) with respect to real property or fixtures, in the registry of deeds of the county where
31 such property is situated; and

32 (2) with respect to personal property other than fixtures, in the filing office in which the
33 filing of a financing statement would perfect, under article 9 of chapter 106, an attached
34 nonpossessory security interest in tangible personal property belonging to the retail electric
35 supplier liable to pay the alternative compliance payment as if the retail electric supplier were
36 located in the commonwealth under section 9-307 of said chapter 106. The filing of any such lien
37 or of a waiver or release of any such lien shall be received and registered or recorded without
38 payment of any fee in the commonwealth.

39 (c) In any case where an alternative compliance payment becomes due upon issuance of a
40 notice of non-compliance, the department, in addition to other modes of relief, may direct a civil
41 action to be filed in a superior court of the commonwealth to collect the debt or enforce the lien
42 of the department under this section with respect to such liability, or to subject any property of
43 whatever nature, of the indebted retail electric supplier, or in which the supplier has any right,
44 title or interest, to the payment of such liability.

45 (d) The department may issue a waiver or release of any lien imposed by this section.
46 Such waiver or release shall be conclusive evidence that the lien upon the property covered by
47 the waiver or release is extinguished. The department shall issue a waiver or release of any lien
48 imposed by this section in any case where the debt for which such lien attached has been paid or
49 legally abated.

50 SECTION 2. This act shall take effect as of July 1, 2021.