

The Commonwealth of Massachusetts

House of Representatives,

The committee on Bills in the Third Reading, to whom was referred the

Engrossed Bill relative to alternative compliance payment liens (see House, No. 4006) being section 12 contained in the 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 was returned by His Excellency the Governor pursuant to Article LVI with recommendation of amendment specified by him, (see Attachment F of House, No. 4019)

Reports recommending that the amendment recommended by His Excellency, the Governor, be considered in the following form:

By striking all after the enacting clause and inserting in place thereof the following:

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

Section 18. (a) Upon issuance by the department of a notice of non-compliance, any alternative compliance payment, as defined in 225 CMR 14.02, owed by a retail electric supplier pursuant to sections 11F, 11F1/2 and 17, including any interest, additional amount, addition to debt or assessable penalty under section 7, together with any costs that may accrue in addition thereto, shall constitute a debt to the department. Such debt shall also be a lien in favor of the department upon all property and rights to property, whether real or personal, belonging to the indebted retail electric supplier, including property acquired after the lien arises. The lien shall arise 30 days after the department issues the first notice of non-compliance and shall continue until: (1) the debt is satisfied; (2) a judgment against the retail electric supplier arising out of such debt is satisfied; (3) any such debt or judgment is discharged by the department by a waiver or release under subsection (d); or (4) any such debt or judgment

becomes unenforceable by reason of the lapse of time. The lien created in favor of the department for any such alternative compliance payment shall remain in effect for a period of 10 years after issuance of the notice of non-compliance. For a bankruptcy case under the United States Code, the running of the period of limitations in this section shall be suspended for: (i) the period during which the department is prohibited by reason of such case from collecting the lien and (ii) the period during which a plan for payment of the lien is in effect and 6 months thereafter. The running of the period of limitations in this section shall be suspended for the period during which the payment or collection is stayed pursuant to the retail electric supplier contesting the lien. If the lien would extend beyond its initial or any subsequent 10-year period, the department may refile its notice of lien. If any such notice of lien is refiled within the required refiling period, as defined in section 6323(g)(3) of the Internal Revenue Code, the lien in favor of the department shall relate back to the date of the first such lien filing. The department shall promulgate such regulations as may be necessary for the implementation of this subsection.

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

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

(2) with respect to personal property other than fixtures, in the filing office in which the filing of a financing statement would perfect, under article 9 of chapter 106, an attached nonpossessory security interest in tangible personal property belonging to the retail

electric supplier liable to pay the alternative compliance payment as if the retail electric supplier were located in the commonwealth under section 9-307 of said chapter 106. The filing of any such lien or of a waiver or release of any such lien shall be received and registered or recorded without payment of any fee in the commonwealth.

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

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

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

And that when so amended the same will be correctly drawn.

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For the Committee.