

SENATE No. 177

The Commonwealth of Massachusetts

PRESENTED BY:

Brian A. Joyce

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act fueling job creation through energy efficiency.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>

SENATE No. 177

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 177) of Brian A. Joyce, Benjamin B. Downing, Daniel A. Wolf, Frank I. Smizik and other members of the General Court for legislation to fuel job creation through energy efficiency . Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act fueling job creation through energy efficiency.

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 23G of the General Laws, as appearing in the 2010 Official
2 Edition, as amended by section 12 of chapter 238 of the acts of 2012, is hereby amended by
3 adding the following section:-

4 Section 46. Commercial Sustainable Energy Program. (a) As used in this section, the
5 following words shall have the following meanings, unless the context clearly requires
6 otherwise:

7 “Agency”, the Massachusetts Development Finance Agency as established in chapter
8 23G.

9 “Betterment Assessment”, an assessment of a betterment on qualified commercial or
10 industrial property in relation to energy improvements established under the commercial
11 sustainable energy program, that has been duly assessed in accordance with chapter 80.

12 “Benefitted property owner”, an owner of qualifying commercial or industrial property
13 who desires to install energy improvements and who provides free and willing consent to the
14 betterment assessment against the qualifying commercial or industrial property.

15 “Commercial or industrial property”, any real property other than a residential dwelling
16 containing fewer than five dwelling units.

17 “Commercial sustainable energy program”, a program that facilitates PACE projects and
18 utilizes the betterment assessments authorized by this section as the source of both the repayment
19 of and collateral for the financing of PACE projects.

21 “Department”, the Department of Energy Resources as established in chapter 25A.

22 “Energy Improvements”, (1) any renovation or retrofitting of qualifying commercial or
23 industrial real property to reduce energy consumption or installation of a renewable energy
24 system to serve qualifying commercial or industrial property, provided such renovation, retrofit
25 or installation is permanently fixed to such qualifying commercial or industrial property, or (2)
26 the construction of an extension of an existing natural gas distribution company line to qualifying
27 commercial or industrial property to enable the qualifying commercial or industrial property to
28 obtain natural gas distribution service to displace utilization of fuel oil, electricity or other
29 conventional energy sources.

30 “EOEEA”, the Executive Office of Energy and Environmental Affairs as established in
31 section 1 of chapter 21A.

32 “Financing entity”, (1) the agency; or (2) special purpose entity duly authorized by the
33 agency.

34 “PACE bonds”, bonds, notes or other evidence of indebtedness, in the form of revenue
35 bonds and not general obligation bonds of the commonwealth or the financing entity, issued by
36 the financing entity related to the commercial sustainable energy program established by this
37 section.

38 “PACE project”, with respect to a parcel of qualifying commercial or industrial property,
39 (1) design, procurement, construction, installation and implementation of energy improvements;
40 (2) related energy audits; (3) renewable energy system feasibility studies; and (4) measurement
41 and verification reports of the installation and effectiveness of such energy improvements.

42 “Participating municipality”, a municipality that has entered into a written agreement
43 with the agency as contemplated by subsection (b)(3) of this section.

44 “Qualifying commercial or industrial property”, any commercial or industrial property
45 owned by any person or entity other than a municipality or other governmental entity, that meets
46 the qualifications established for the commercial sustainable energy program in accordance with
47 the program guidelines as established in subsection (d) of this section and in subsection (13) of
48 section 6 of chapter 25A.

49 “Special purpose entity”, a partnership, limited partnership, association, corporation,
50 limited liability company or other entity established and authorized by the agency to issue PACE

bonds, subject to approval by the agency as provided by the agency in its resolution authorizing the special purpose entity to issue PACE bonds.

(b)(1) The agency, in consultation with the department, shall establish a commercial sustainable energy program in the commonwealth, and in furtherance thereof, is authorized to issue PACE bonds, either directly or through a special purpose entity, for the purpose of financing all or a portion of the costs of the activities comprising one or more PACE projects.

(2) Upon the approval of a PACE project by the department, the financing entity may issue PACE bonds. Such PACE bonds shall be issued in accordance with section 8 of this chapter; provided, however, that the agency shall not be required to make the findings set forth in subsections (a) and (b) of said section 8. PACE bonds issued in furtherance of this section shall not be subject to, or otherwise included in, the principal amount of debt obligations issued under section 29 of this chapter. Such PACE bonds may be secured as to both principal and interest by a pledge of revenues to be derived from the commercial sustainable energy program, including revenues from betterment assessments on qualifying commercial or industrial property on which the PACE projects being financed by the issuance of such PACE bonds are located, as well as any reserve funds or other credit enhancements created in connection with the commercial sustainable energy program.

(3) Each municipality in the Commonwealth shall have the option to participate in the commercial sustainable energy program as a participating municipality by executing a written agreement, as approved by a majority vote of the city or town council, or by a majority vote of the board of selectmen, with the agency pursuant to which the municipality has agreed to assess, collect, remit and assign betterment assessments, in return for energy improvements for a benefitted property owner located within such municipality and for costs reasonably incurred in performing such duties. Any energy use reduction accomplished through the commercial sustainable energy program shall count toward the municipality's 20 per cent baseline reduction required by section 10 of chapter 25A in order to qualify as a green community.

(c) The agency, (1) working in conjunction with the department, shall develop program guidelines governing the terms and conditions under which financing for PACE projects may be made available to the commercial sustainable energy program, which may include standards to encourage property owners to undertake projects where the energy cost savings of the energy improvements over the useful life of the improvements exceeds the costs of the improvements; (2) shall provide information as requested by the department regarding the expected financing costs for PACE projects; (3) may serve as an aggregating entity for the purpose of securing state or private third-party financing for energy improvements pursuant to this section; (4) may establish a loan loss, liquidity reserve or credit enhancement program to support PACE bonds issued under this section; and (5) may use the services of one or more private, public or quasi-public third-party administrators to administer, provide support or obtain financing for PACE projects under the commercial sustainable energy program.

(d) If a benefitted property owner requests financing from the agency for energy improvements under this section, the agency shall:

(1) Refer the project to the department for approval under the guidelines established by subsection (13) of section 6 of chapter 25A;

(2) Upon confirmation of project approval by the department, evaluate the project for compliance with the financial underwriting guidelines established by the agency;

(3) Impose requirements and conditions on the financing in order to ensure timely repayment, including, but not limited to, procedures for placing a lien on a property as security for the repayment of the betterment assessment;

(4) Require that the property owner provide a copy of a contract duly executed by the contractor performing the energy improvements;

(5) Require that the property owner obtain consent from any existing mortgage holder of the property to the intent to finance such energy improvements pursuant to this section; and

(6) If the agency approves financing, require the participating municipality to levy a betterment assessment in a manner consistent with this section and with chapter 80, insofar as such provisions may be applicable and consistent with this section, on the qualifying commercial or industrial property in a principal amount sufficient to pay the costs of the energy improvements and any associated costs that the agency determines will benefit the qualifying commercial or industrial property, including costs of the agency.

(e)(1) The agency may enter into a financing and assessment agreement with the property owner of qualifying commercial or industrial property. The agency may raise funds to supply the financing under such agreement by issuing PACE bonds. Upon execution of such agreement and immediately prior to making the funds, which may constitute all or a portion of the proceeds from the issuance of such PACE bonds, available to the property owner for the PACE project under the agreement, the agency shall notify the participating municipality and the participating municipality or its designee shall record the betterment assessment and lien on the qualifying commercial or industrial property.

(2) The agency shall disclose to the property owner the costs associated with participating in the commercial sustainable energy program established by this section, including the effective interest rate of the betterment assessment, any fees charged by the authority to administer the program and any fees charged by third parties such as originators or other intermediaries.

(f) At the time the betterment assessment is made, the agency shall set the term and amortization schedule, the fixed or variable rate of interest for the repayment of the betterment assessment amount, and any required closing fees and costs. The amortization schedule shall provide for an amortization period of no longer than the lesser of: (1) the useful life of the

longest-lived of the energy improvements comprising the PACE project(s) financed by such betterment assessment; or (2) 20 years. The interest rate, which may be supplemented with state or federal funding, shall be sufficient to pay the principal and interest and may be calculated to include the financing and administrative costs of the commercial sustainable energy program, including delinquencies.

(g) When the agency has authorized, but not issued, PACE bonds for PACE projects and other costs of the commercial sustainable energy program, including interest costs and other costs related to the issuance of PACE bonds, the agency may require the participating municipality where the qualifying commercial or industrial property is located, or the program administrator duly approved by the agency, to record the agreement between the agency and the property owner as a betterment pursuant to chapter 80, except that such betterment may apply to a single parcel of qualifying commercial or industrial property, and as a lien against the qualifying commercial or industrial property benefitted.

(h) Betterment assessments levied pursuant to this section and the interest, fees and any penalties thereon shall constitute a lien against the qualifying commercial or industrial real property until they are paid, notwithstanding the provisions of section 12 of chapter 80, and shall continue notwithstanding any alienation or conveyance of the qualifying commercial or industrial real property by one property owner to a new property owner. A new property owner shall take title to the qualifying commercial or industrial property subject to the betterment assessment and related lien. The lien shall be levied and collected in the same manner as the property taxes of the participating municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies and lien priorities. Each lien may be continued, recorded and released upon repayment in full of the benefit assessment in the manner provided for property tax liens. Each lien shall take precedence over all other liens or encumbrances, except a lien for taxes of the municipality on real property.

(i) Any participating municipality may sell or assign to the agency any and all liens filed by the tax collector, as provided in the written agreement between the participating municipality and the agency. The agency and the assignee(s) shall negotiate the consideration received by the agency. The assignee(s) shall have and possess the same powers and rights at law or in equity as the agency and the participating municipality and its tax collector would have had with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection. The assignee(s) shall have the same rights to enforce such liens as any private party holding a lien on real property, including, but not limited to, foreclosure and a suit on the debt. The assignee(s) shall recover costs and reasonable attorneys' fees incurred as a result of any foreclosure action or other legal proceeding brought pursuant to this section and directly related to the proceeding from those having title to the property subject to the proceedings. Such costs and fees may be collected by the assignee(s) at any time after the assignee(s) have made a demand for payment.

162 (j) The exercise of the powers granted by this section shall be for the benefit of the people
163 of the commonwealth by increasing energy efficiency in the commonwealth. As the exercise of
164 such powers shall constitute the performance of essential government functions, the financing
165 entity shall not be required to pay any taxes or assessments upon the property acquired or used
166 by the financing entity under this section or upon the income derived therefrom. The PACE
167 bonds issued under this section, their transfer and the income derived therefrom, including any
168 profit made on the sale thereof, shall at all times be free of taxation within the commonwealth.

169 (k) The activities of the commercial sustainable energy program shall be reviewed in the
170 3-year planning process and annual reviews undertaken pursuant to section 21 of chapter 25.

171 (l) The agency may establish rules and guidelines as are necessary to implement the
172 purposes of the program, including procedures describing the application process and criteria to
173 be used in evaluating application for PACE bonds under this section.

174 SECTION 2. Section 6 of chapter 25A of the General Laws, as appearing in the 2010
175 Official Edition, is hereby amended by striking subsection 12 and inserting in place thereof the
176 following subsections:-

177 (12) intervene and advocate on behalf of small commercial and industrial users before the
178 department of public utilities in any dispute between such businesses and generation or
179 distribution companies, as defined pursuant to section 1 of chapter 164; and

180 (13) plan, develop, oversee and operate the commercial sustainable energy program, with
181 the Massachusetts Development Finance Agency, in accordance with the provisions of section
182 46 of chapter 23G. In accordance with this section, the Department shall approve each PACE
183 project prior to the issuance of a PACE bond under section 46 of chapter 23G and in so doing
184 shall consider whether the energy cost savings of the energy improvements over the useful life of
185 such improvements exceed the costs of such improvements.