SENATE . . . . No. 2255

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

SENATE, Tuesday, July 8, 2014

The committee on Ways and Means, to whom was referred the Senate Bill fueling job creation through energy efficiency (Senate, No. 177), reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2255).

For the committee,
Stephen M. Brewer

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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:

SECTION 1. Chapter 23G of the General Laws is hereby amended by adding the following section:-

Section 46. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

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

"Benefitted property owner", an owner of qualifying commercial or industrial property who desires to install energy improvements and freely and willingly consents to the betterment assessment against the qualifying commercial or industrial property.

"Commercial or industrial property", any real property other than a residential dwelling containing fewer than 5 dwelling units.

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

“Department”, the department of energy resources.

“Energy improvements”, (i) any renovation, retrofitting or installation of qualifying commercial or industrial property to reduce energy consumption or installation of a renewable energy system to serve qualifying commercial or industrial property; provided, however, that the renovation, retrofit or installation shall be permanently fixed to the qualifying commercial or industrial property; or (ii) the construction of an extension of an existing natural gas distribution company line to provide natural gas distribution service to a qualifying commercial or industrial property to displace its utilization of fuel oil, electricity or other conventional energy sources.
“Financing entity”, the agency or a special purpose entity duly authorized by the agency.

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

“PACE project”, with respect to a qualifying commercial or industrial property, (i) the design, procurement, construction, installation and implementation of energy improvements; (ii) related energy audits; (iii) renewable energy system feasibility studies; and (iv) measurement and verification reports of the installation and effectiveness of the energy improvements.

“Participating municipality”, a municipality that has entered into a written agreement with the agency pursuant to paragraph (3) of subsection (b).

"Qualifying commercial or industrial property", any commercial or industrial property owned by any person or entity other than a municipality or other governmental entity that meets the qualifications for the commercial sustainable energy program in accordance with subsection (d) and clause (13) of section 6 of chapter 25A.

"Special purpose entity", a partnership, limited partnership, association, corporation, limited liability company or other entity established and authorized by the agency to issue PACE bonds subject to approval by the agency.

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

(2) Upon the approval of a PACE project by the department, the financing entity may issue PACE bonds. The PACE bonds shall be issued in accordance with section 8; provided, however, that the agency shall not be required to make the findings required by subsections (a) and (b) of said section 8. PACE bonds issued pursuant to this section shall not be subject to or otherwise included in the principal amount of debt obligations issued under section 29. PACE bonds may be secured as to both principal and interest by a pledge of revenues 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 the PACE bonds are located and any reserve funds or other credit enhancements created under the commercial sustainable energy program.

(3) Each municipality may 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. Under the agreement, the municipality shall assess, collect, remit and assign betterment assessments in return for energy improvements for a benefitted property owner located in the municipality and for costs reasonably incurred in performing these duties. Any energy use reduction under the commercial sustainable energy program shall count toward the municipality's 20 per cent baseline reduction required by section 10 of chapter 25A to qualify as a green community.

(c) The agency shall: (i) by working in conjunction with the department, develop program guidelines governing the terms and conditions under which financing for PACE projects may be made available to the commercial sustainable energy program, including 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; and (ii) provide information as requested by the department regarding the expected financing costs for PACE projects. The agency may: (A) serve as an aggregating entity to secure state or private third-party financing for energy improvements pursuant to this section; (B) establish a loan loss, liquidity reserve or credit enhancement program to support PACE bonds issued pursuant to this section; and (C) use the services of 1 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 for a PACE project under this section, the agency shall:

(i) refer the PACE project to the department for approval pursuant to clause (13) of section 6 of chapter 25A;

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

(iii) impose requirements and conditions on the financing to ensure timely repayment including, but not limited to, procedures for placing a lien on a qualifying commercial or industrial property as security for the repayment of the betterment assessment;

(iv) require the benefited property owner to provide a copy of a contract duly executed by the contractor performing the energy improvements;

(v) require the benefited property owner to obtain consent of the intent to finance energy improvements pursuant to this section from any existing mortgage holder of the qualifying commercial or industrial property; and

(vi) 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, 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, including agency costs, that the agency determines shall benefit the qualifying commercial or industrial property.

(e) (1) The agency may enter into a financing and assessment agreement with the property owner of a qualifying commercial or industrial property. The agency may raise funds to supply the financing under the agreement by issuing PACE bonds. Upon execution of the agreement and immediately prior to making the funds, which may constitute all or a portion of the proceeds from the issuance of the 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 agency 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 an amortization period of not longer than the lesser of: (i) the useful life of the longest-lived of the energy improvements comprising the PACE projects financed by the betterment assessment; or (ii) 20 years. The agency shall strive to ensure that the amortization period is no longer than the projected time in which the energy savings realized by the PACE project surpass the costs of said project. 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; provided, however, that the 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) Notwithstanding section 12 of chapter 80, betterment assessments levied pursuant to this section and the interest, fees and any penalties on the betterment assessments shall constitute a lien against the qualifying commercial or industrial property until they are paid and shall continue notwithstanding any alienation or conveyance of the qualifying commercial or industrial property by 1 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 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, the manner in which the participating municipality collects any penalties, fees, 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 participating municipality on real property. If benefit assessments are paid in installments and any such installment is not paid when due, the benefit assessment lien may be foreclosed to the extent of any unpaid installment payments and any penalties, interest and fees related to the unpaid installment payments. If the benefit assessment lien is foreclosed, the betterment assessment lien shall survive the judgment of foreclosure to the extent of any unpaid installment payments of the benefit assessment secured by the benefit assessment lien that were not the subject of the judgment.

(i) Any participating municipality may sell or assign to the agency or to an assignee designated by the agency any and all liens filed by the tax collector as provided in the agreement between the participating municipality and the agency. The agency and the assignee shall negotiate the consideration received by the agency. The assignee shall have the same powers and rights at law or in equity as the agency, the participating municipality and the participating municipality's tax collector would have had with regard to the precedence and priority of the lien, the accrual of interest and the fees and expenses of collection. The assignee shall have the same rights to enforce the 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 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 at any time after the assignee has made a demand for payment.

(j) The exercise of the powers granted pursuant to this section shall constitute the performance of essential government functions and the financing entity shall not be required to pay any taxes or assessments upon the property acquired or used by the financing entity or upon the income derived from the property acquired or used by the financing entity under this section. The PACE bonds issued under this section, their transfer and the income derived from their transfer, including any profit made on the sale of the PACE bonds, shall not be subject to taxation in the commonwealth.

(k) The activities of the commercial sustainable energy program shall be reviewed on an annual basis by the department..

(l) The agency may establish rules and guidelines to implement the program, including procedures describing the application process and criteria to evaluate the applications for PACE bonds under this section.

(m) The department, in consultation with the agency, may promulgate regulations to include eligibility for resiliency improvements in the commercial sustainable energy program.

SECTION 2. Section 6 of chapter 25A of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out clause 12 and inserting in place thereof the following 2 clauses:-

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

(13) plan, develop, oversee and operate the commercial sustainable energy program with the Massachusetts Development Finance Agency in accordance with section 46 of chapter 23G. Pursuant to this section, the department shall approve each PACE project prior to the issuance of a PACE bond under said section 46 of said chapter 23G and, in so doing, shall consider whether the energy cost savings of the energy improvements over the useful life of the improvements exceeds the costs of the improvements.