

HOUSE No. 2889

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

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 promoting residential energy efficiency improvements.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>

HOUSE No. 2889

By Mr. Kulik of Worthington, a petition (accompanied by bill, House, No. 2889) of Stephen Kulik, Ellen Story and Mark J. Cusack for legislation to promote residential energy efficiency improvements in the Commonwealth. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act promoting residential energy efficiency improvements.

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 is hereby amended by adding the
2 following section:

3 Section 47. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 Betterment assessment, an assessment of a betterment on qualified residential property in
6 relation to energy improvements established under the residential sustainable energy program
7 that has been duly assessed in accordance with chapter 80

8 Benefitted property owner, an owner of qualifying residential property who desires to
9 install energy improvements and freely and willingly consents to the betterment assessment
10 against the qualifying residential property.

11 Residential property, any real property other than a commercial or industrial property
12 with fewer than five dwelling units.

13 Residential sustainable energy program, a program that facilitates PACE projects and
14 utilizes the betterment assessments authorized by this section as the source of both the repayment
15 of and collateral for the financing of PACE projects.

16 Department, the department of energy resources.

17 Energy improvements, any renovation, retrofitting or installation of qualifying residential
18 property to reduce energy consumption or installation of a renewable energy system to serve
19 qualifying residential property; provided, however, that the renovation, retrofit or installation
20 shall be permanently fixed to the qualifying residential property.

21 Financing entity, the agency or a special purpose entity duly authorized by the agency.

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

25 PACE project, with respect to a qualifying residential property, (i) the design,
26 procurement, construction, installation and implementation of energy improvements; (ii) related
27 energy audits; (iii) renewable energy system feasibility studies; and (iv) measurement and
28 verification reports of the installation and effectiveness of the energy improvements.

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

31 Qualifying residential property, any residential property owned by any person or entity
32 other than a municipality or other governmental entity that meets the qualifications for the
33 residential sustainable energy program in accordance with clause (13) of section 6 of chapter
34 25A.

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

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

42 (2) Upon the approval of a PACE project by the department, the financing entity may
43 issue PACE bonds. The PACE bonds shall be issued in accordance with section 8; provided,
44 however, that the agency shall not be required to make the findings required by subsections (a)
45 and (b) of said section 8. PACE bonds issued pursuant to this section shall not be subject to or
46 otherwise included in the principal amount of debt obligations issued under section 29. PACE
47 bonds may be secured as to both principal and interest by a pledge of revenues derived from the
48 residential sustainable energy program, including revenues from betterment assessments on
49 qualifying residential property on which the PACE projects being financed by the issuance of the
50 PACE bonds are located and any reserve funds or other credit enhancements created under the
51 residential sustainable energy program.

52 (3) Each municipality may participate in the residential sustainable energy program as a
53 participating municipality by executing a written agreement, as approved by a majority vote of
54 the city or town council or by a majority vote of the board of selectmen, with the agency. Under
55 the agreement, the municipality shall assess, collect, remit and assign betterment assessments in
56 return for energy improvements for a benefitted property owner located in the municipality and
57 for costs reasonably incurred in performing these duties. Any energy use reduction under the
58 residential sustainable energy program shall count toward the municipality's 20 per cent baseline
59 reduction required by section 10 of chapter 25A to qualify as a green community.

60 (c) The agency shall: (i) by working in conjunction with the department, develop program
61 guidelines governing the terms and conditions under which financing for PACE projects may be
62 made available to the residential sustainable energy program, including standards to encourage
63 property owners to undertake projects where the energy cost savings of the energy improvements
64 over the useful life of the improvements exceeds the costs of the improvements; and (ii) provide
65 information as requested by the department regarding the expected financing costs for PACE
66 projects. The agency shall also establish a loan loss, liquidity reserve or credit enhancement
67 program to support PACE bonds issued pursuant to this section, to be funded by proceeds from
68 PACE bond issuance and future appropriations as needed. The agency may: (A) serve as an
69 aggregating entity to secure state or private third-party financing for energy improvements
70 pursuant to this section; and (B) use the services of 1 or more private, public or quasi-public
71 third-party administrators to administer, provide support or obtain financing for PACE projects
72 under the residential sustainable energy program.

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

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

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

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

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

84 (v) require the benefited property owner to notify any existing mortgage holder of the
85 qualifying residential property of the intent to finance energy improvements pursuant to this
86 section from; and

87 (vi) if the agency approves financing, require the participating municipality to levy a
88 betterment assessment in a manner consistent with this section and with chapter 80 , as such
89 provisions may be applicable and consistent with this section, on the qualifying residential
90 property in a principal amount sufficient to pay the costs of the energy improvements and any
91 associated costs, including agency costs, that the agency determines shall benefit the qualifying
92 residential property.

93 (e) (1) The agency may enter into a financing and assessment agreement with the
94 property owner of a qualifying residential property. The agency may raise funds to supply the
95 financing under the agreement by issuing PACE bonds. Upon execution of the agreement and

96 immediately prior to making the funds, which may constitute all or a portion of the proceeds
97 from the issuance of the PACE bonds, available to the property owner for the PACE project
98 under the agreement, the agency shall notify the participating municipality and the participating
99 municipality or its designee shall record the betterment assessment and lien on the qualifying
100 residential property.

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

105 (f) At the time the betterment assessment is made, the agency shall set the term and
106 amortization schedule, the fixed or variable rate of interest for the repayment of the betterment
107 assessment amount and any required closing fees and costs. The amortization schedule shall
108 provide an amortization period of not longer than the lesser of: (i) the useful life of the longest-
109 lived of the energy improvements comprising the PACE projects financed by the betterment
110 assessment; or (ii) 20 years. The agency shall strive to ensure that the amortization period is no
111 longer than the projected time in which the energy savings realized by the PACE project surpass
112 the costs of said project. The interest rate, which may be supplemented with state or federal
113 funding, shall be sufficient to pay the principal and interest and may be calculated to include the
114 financing and administrative costs of the residential sustainable energy program, including
115 delinquencies.

116 (g) When the agency has authorized, but not issued, PACE bonds for PACE projects and
117 other costs of the residential sustainable energy program, including interest costs and other costs

118 related to the issuance of PACE bonds, the agency may require the participating municipality
119 where the qualifying residential property is located or the program administrator duly approved
120 by the agency to record the agreement between the agency and the property owner as a
121 betterment pursuant to chapter 80; provided, however, that the betterment may apply to a single
122 parcel of qualifying residential property and as a lien against the qualifying residential property
123 benefitted.

124 (h) Notwithstanding section 12 of chapter 80, betterment assessments levied pursuant to
125 this section and the interest, fees and any penalties on the betterment assessments shall constitute
126 a lien against the qualifying residential property until they are paid and shall continue
127 notwithstanding any alienation or conveyance of the qualifying residential property by 1 property
128 owner to a new property owner. A new property owner shall take title to the qualifying
129 residential property subject to the betterment assessment and lien. The lien shall be levied and
130 collected in the same manner as the property taxes of the participating municipality on real
131 property including, in the event of default or delinquency, the manner in which the participating
132 municipality collects any penalties, fees, remedies and lien priorities. Each lien may be
133 continued, recorded and released upon repayment in full of the benefit assessment in the manner
134 provided for property tax liens. Each lien shall take precedence over all other liens or
135 encumbrances except a lien for taxes of the participating municipality on real property. If benefit
136 assessments are paid in installments and any such installment is not paid when due, the benefit
137 assessment lien may be foreclosed to the extent of any unpaid installment payments and any
138 penalties, interest and fees related to the unpaid installment payments. If the benefit assessment
139 lien is foreclosed, the betterment assessment lien shall survive the judgment of foreclosure to the

140 extent of any unpaid installment payments of the benefit assessment secured by the benefit
141 assessment lien that were not the subject of the judgment.

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

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

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

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

167 SECTION 2. Section 6 of chapter 25A of the General Laws, as appearing in the 2012
168 Official Edition, is hereby amended by adding the following clause:

169 (13) plan, develop, oversee and operate the residential sustainable energy program with
170 the Massachusetts Development Finance Agency in accordance with section 47 of chapter 23G.
171 Pursuant to this section, the department shall approve each PACE project prior to the issuance of
172 a PACE bond under said section 47 of said chapter 23G and, in so doing, shall consider whether
173 the energy cost savings of the energy improvements over the useful life of the improvements
174 exceeds the costs of the improvements.