

2016 -- H 8336

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - PROPERTY ASSESSED CLEAN
ENERGY PROGRAM

Introduced By: Representative John J. DeSimone

Date Introduced: June 14, 2016

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 39-26.5-2, 39-26.5-4.1, 39-26.5-6 and 39-26.5-11 of the General
2 Laws in Chapter 39-26.5 entitled "Property Assessed Clean Energy Program" are hereby
3 amended to read as follows:

4 **39-26.5-2. Definitions.** -- As used in this chapter, the following definitions apply:

5 (1) "Commercial property" means a property operated for commercial purposes, or a
6 residential property which contains five (5) or more housing units.

7 (2) "Distributed generation system" means an electrical generation facility located in the
8 electric distribution company's load zone with a nameplate capacity no greater than five
9 megawatts (5 MW), using eligible renewable energy resources as defined by § 39-26-5, including
10 biogas created as a result of anaerobic digestion, but, specifically excluding all other listed
11 eligible biomass fuels, and connected to an electrical power system owned, controlled, or
12 operated by the electric distribution company.

13 (3) "Dwelling" means a residential structure or mobile home which contains one to four

14 (4) family housing units, or individual units of condominiums or cooperatives.

15 (4) "Eligible net metering system" means a facility generating electricity as defined in §
16 39-26.4-2.

17 (5) "Eligible renewable energy resources" means resources as defined in § 39-26-5.

18 (6) "Energy efficiency projects" means those projects that are eligible under § 39-1-27.7

1 or projects that have been defined as eligible in the PACE rules and regulations.

2 (7) "Institution" means a private entity or quasi-state agency.

3 (8) "Loan loss reserve fund" or "(LRF)" means funds set aside to cover losses in the
4 event of loan defaults.

5 (9) "Municipality" or "towns and cities" means any Rhode Island town or city with
6 powers set forth in title 45 of the general laws.

7 (10) "Net metering" means using electricity as defined in § 39-26.4-2.

8 (11) "PACE assessment" or "assessment" means the special assessment placed on a
9 PACE property owner's property tax [or other municipal assessment](#) bill in accordance with this
10 chapter, to be collected by the PACE municipality in which that PACE property is located and
11 remitted to the [Rhode Island Infrastructure Bank or to the](#) lender that has financed that PACE
12 project. The PACE assessment shall be owed by the current owner of the related PACE property
13 as of the time each PACE assessment comes due. In the event of a transfer of ownership, all
14 PACE assessments coming due after the date of the transfer, by foreclosure or otherwise, shall be
15 owed by the transferee.

16 (12) "PACE lien" means the non-accelerating lien placed on a PACE property in
17 accordance with the rules and regulations promulgated by the Rhode Island ~~infrastructure bank~~
18 [Infrastructure Bank](#) pursuant to this chapter, in order to secure the repayment of a PACE
19 assessment made in connection with that PACE property and to secure the repayment of each
20 PACE assessment to be made by that PACE property owner as each assessment comes due.

21 (13) "PACE municipality" means a municipality voluntarily designated by its city or
22 town council as a property-assessed clean energy municipality.

23 (14) "PACE project" or "project" means a distinct installation of an eligible energy
24 efficiency system, renewable energy net metering system, distributed generation system,
25 alternative fuel infrastructure upgrade, and/or other eligible environmental health and
26 environmental safety upgrades.

27 (15) "PACE property" or "property" means any residential property or commercial
28 property which is the subject of an approved application for a PACE project filed pursuant to this
29 chapter.

30 (16) "Past due balances" means the sum of the due and unpaid assessments on a PACE
31 Property as of the time the ownership of that PACE property is transferred. "Past due balances"
32 does not mean the unaccelerated balance of the PACE loan at the time that property is transferred.

33 (17) "Property-assessed clean energy" or "PACE" is a voluntary financing mechanism
34 which allows both residential and commercial property owners to access affordable, long-term

1 financing for energy upgrades, and other eligible environmental health and environmental safety
2 upgrades on their property.

3 (18) "Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#)" means the Rhode Island
4 ~~infrastructure bank~~ [Infrastructure Bank](#) ("RIIB"). For the purposes of this chapter, Rhode Island
5 ~~infrastructure bank~~ [Infrastructure Bank](#) shall include other related state agencies and/or third party
6 administrators, as may be engaged by the Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#)
7 for the purposes of providing the services envisioned by the rules and regulations promulgated in
8 accordance with § 39-26.5-11.

9 **39-26.5-4.1. Financing agreements -- PACE assessments -- PACE liens. --** (a) The
10 Rhode Island ~~infrastructure bank~~ [Infrastructure Bank or a third party capital provider](#) may enter
11 into a financing agreement with a qualifying PACE property owner. After such agreement is
12 entered into, and upon notice from the Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#), the
13 PACE municipality shall: (i) place a caveat on the land records indicating that a PACE
14 assessment and lien is anticipated upon completion of the PACE project for such property; or (ii)
15 at the direction of the Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#), levy the PACE
16 assessment and file a lien on the land records on the estimated costs of the PACE Project prior to
17 the completion or upon the completion of said PACE project.

18 (b) PACE assessments levied pursuant to this chapter and the interest, fees and any
19 penalties thereon shall constitute a lien against the qualifying PACE property on which they are
20 made until they are paid. Such lien shall be collected in the same manner as the property taxes of
21 the PACE municipality on real property, including, in the event of default or delinquency, with
22 respect to any penalties, fees and remedies. Each such lien may be recorded and released in the
23 manner provided for property tax liens and subject to the consent of existing mortgage holders,
24 shall take precedence over all other liens or encumbrances except a lien for taxes of the
25 municipality on real property, which lien for taxes shall have priority over such PACE assessment
26 lien. To the extent PACE assessments are paid in installments and any such installment is not
27 paid when due, the PACE assessment lien may be foreclosed to the extent of any unpaid
28 installment payments and any penalties, interest, and fees related thereto. In the event such PACE
29 assessment lien is foreclosed, such PACE assessment lien shall survive the judgment of
30 foreclosure to the extent of any unpaid installment payments of the PACE assessment secured by
31 such PACE assessment lien that were not the subject of such judgment.

32 (c) Any PACE municipality may assign to the Rhode Island ~~infrastructure bank~~
33 [Infrastructure Bank](#) any and all liens filed by the PACE municipality, as provided in the written
34 agreement between the participating municipality and the Rhode Island ~~infrastructure bank~~

1 [Infrastructure Bank](#). The Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#) may sell or assign,
2 for consideration, any and all liens received from the participating municipality. The
3 consideration received by the Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#) shall be
4 negotiated between the Rhode Island Infrastructure ~~bank~~ [Bank](#) and the assignee. The assignee or
5 assignees of such liens shall have and possess the same powers and rights at law or in equity as
6 the Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#) and the participating municipality and
7 its tax collector would have had if the lien had not been assigned with regard to the precedence
8 and priority of such lien, the accrual of interest and the fees and expenses of collection. The
9 assignee shall have the same rights to enforce such liens as any private party holding a lien on
10 real property, including, but not limited to, foreclosure and a suit on the debt. Costs and
11 reasonable attorneys' fees incurred by the assignee as a result of any foreclosure action or other
12 legal proceeding brought pursuant to this section and directly related to the proceeding shall be
13 taxed in any such proceeding against each person having title to any property subject to the
14 proceedings. Such costs and fees may be collected by the assignee at any time after demand for
15 payment has been made by the assignee.

16 **39-26.5-6. Priority of PACE lien.** -- (a) A PACE lien on a residential property shall be:
17 subordinate to all liens on the residential property in existence at the time the residential PACE
18 lien is filed; subordinate to a first mortgage on the residential property recorded after such PACE
19 lien is filed; and superior to any other lien on the residential recorded after such PACE lien is
20 filed. This subsection shall not affect the status or priority of any other municipal or statutory lien.

21 (b) At the time of a transfer of property ownership of a residential property, including by
22 foreclosure, the past due balances of any special assessment under this chapter shall be due for
23 payment. In the event of a foreclosure action, the past due balances shall include all payments on
24 a PACE assessment that are due and unpaid as of the date of the foreclosure. Unless otherwise
25 agreed by the PACE lender, all payments on the PACE assessment that become due after the date
26 of transfer by foreclosure or otherwise shall continue to be secured by a PACE lien on the PACE
27 property and shall be the responsibility of the transferee.

28 (c) A PACE lien on a commercial property shall be: senior to all liens on the commercial
29 property in existence at the time the PACE lien is filed, subject to the consent of the ~~senior~~
30 [existing](#) mortgage ~~holder~~ [holder\(s\)](#) on the property; senior to all liens filed or recorded after the
31 time the PACE lien is created; but junior to a municipal tax lien.

32 (d) At the time of a transfer of property ownership of a commercial property, including
33 by foreclosure, the past due balances of any PACE assessment under this chapter shall be due for
34 payment. Unless otherwise agreed by the PACE lender, all payments of PACE assessments that

1 become due after the date of transfer by foreclosure or otherwise shall be secured by a PACE lien
2 on the PACE property and shall be the responsibility of the transferee.

3 **39-26.5-11. Rules and regulations.** -- (a) The Rhode Island ~~infrastructure bank~~
4 [Infrastructure Bank](#) shall consult with the office of energy resources to promulgate rules and
5 regulations, in accordance with this section, and in accordance with chapter 35 of title 42. Such
6 rules and regulations should ensure that the PACE program does not adversely affect the
7 implementation of any other energy program in whose coordination the Rhode Island
8 ~~infrastructure bank~~ [Infrastructure Bank](#) or the office of energy resources is involved. Such rules
9 and regulations shall include, but not be limited to, the following:

10 (1) The necessary application requirements and procedures for any residential property
11 owner or commercial property owner seeking PACE financing;

12 (2) The necessary qualifications and requirements for a proposed PACE projects;

13 (3) The underwriting criteria to be applied in determining the eligibility of properties and
14 property owners for PACE projects; and

15 (4) Requirements that all existing lien holders on a property be given notice prior to a
16 PACE assessment and lien being filed in connection with that property and that all commercial
17 property owners seeking a commercial PACE loan receive consent of the ~~primary existing~~
18 mortgage ~~holder~~ [holder\(s\)](#) on that property prior to being eligible.

19 (b) The Rhode Island ~~infrastructure bank~~ [Infrastructure Bank](#) shall be responsible for
20 promulgating agreements, forms and other documents necessary for the efficient administration
21 of the PACE program.

22 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - PROPERTY ASSESSED CLEAN
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1 This act would provide that a PACE-related assessment shall, subject to the consent of
2 existing mortgage holders, take precedence over all other liens except for liens for taxes. This act
3 would further provide that PACE-related assessments may be foreclosed due to non-payment of
4 any installment, and that such lien shall survive the judgment of foreclosure to the extent of any
5 unpaid amount(s) secured by the lien not subject to judgment.

6 This act would take effect upon passage.

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