

PACE bill summary: Full bill follows on page 3.

157 — PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS

By law, municipalities may establish PACE programs under which they loan money to local residents and businesses for energy efficiency and renewable energy improvements. The loans are backed by a lien on the improved property that is treated like a property tax lien, other than not having priority over existing mortgages.

The bill (1) requires CEFIA to establish a separate PACE program for qualifying commercial property (including multifamily buildings with five or more units) and (2) allows municipalities to participate in this program under a written agreement approved by their legislative bodies.

The bill requires CEFIA to:

1. develop program guidelines governing the terms and conditions under which state financing may be made available to the commercial program, including, in consultation with representatives from the banking industry, municipalities, and property owners, developing the parameters for consent by existing mortgage holders;
2. establish the position of commercial sustainable energy program liaison within CEFIA;
3. establish a loan loss reserve or other credit enhancement program for qualifying commercial real property; and
4. adopt standards to ensure that the energy cost savings of the improvements over their useful life exceed their costs.

It allows CEFIA to:

1. serve as an aggregating entity to secure state or private third-party financing for the energy improvements and
2. use the services of one or more private, public, or quasi-public third-party administrators to administer, provide support, or obtain financing for the program (existing law has a similar provision for municipal programs).

The bill allows CEFIA to make appropriations for and issue bonds, notes or other obligations to finance the improvements. The bonds or other obligations must be issued in accordance with the law governing CEFIA bonds. They may be secured by a pledge

of revenues derived from the commercial program, including revenues from benefit assessments on qualifying commercial real property.

The bill's provisions regarding the program are generally similar to current law, with CEFIA taking the place of the municipality. But, the bill:

1. allows CEFIA to require participating municipalities to levy a benefits assessment on participating properties;
2. requires that the energy audit or renewable energy feasibility analysis assess the energy cost savings of the proposed project over its useful life;
3. gives the lien priority over existing mortgages, but requires that the property owner give existing mortgage holders at least 30 days' written notice of his or her intent to participate in the program before the lien is recorded;
4. authorizes variable interest loans; and
5. allows participating municipalities to assign the liens to CEFIA and allows CEFIA to sell or assign the liens.

Under the bill, the notice that must be given to prospective participants in the commercial program is somewhat different than that required under current law. Under current law, the municipality must give prospective participants a notice that encourages them to seek legal advice to understand the potential consequences of participating in the program. Under the bill, municipalities that establish commercial programs must disclose to the property owner:

1. the costs and risks associated with participating in the program, including risks related to the failure property owner's failure to pay the benefit assessment; and
2. the effective interest rate of the benefit assessment, including fees charged by CEFIA to administer the program, and the risks associated with variable interest rate financing.

The bill requires the municipality to notify the owner that he or she may rescind any financing agreement under the program within three business days after entering the agreement.

EFFECTIVE DATE: Upon passage

Sec. 157. (NEW) (*Effective from passage*) (a) As used in this section:

(1) "Energy improvements" means any renovation or retrofitting of qualifying commercial real property to reduce energy consumption or installation of a renewable energy system to service qualifying commercial real property, provided such renovation, retrofit or installation is permanently fixed to such qualifying commercial real property;

(2) "Qualifying commercial real property" means any commercial or industrial property, regardless of ownership, that meets the qualifications established for the commercial sustainable energy program;

(3) "Commercial or industrial property" means any real property other than a residential dwelling containing less than five dwelling units;

(4) "Benefitted property owner" means an owner of qualifying commercial real property who desires to install energy improvements and provides free and willing consent to the benefit assessment against the qualifying commercial real property;

(5) "Commercial sustainable energy program" means a program that facilitates energy improvements and utilizes the benefit assessments authorized by this section as security for the financing of the energy improvements;

(6) "Municipality" means a municipality, as defined in section 7-369 of the general statutes;

(7) "Benefit assessment" means the assessment authorized by this section;

(8) "Participating municipality" means a municipality that has entered into a written agreement, as approved by its legislative body, with the authority pursuant to which the municipality has agreed to assess, collect, remit and assign, benefit assessments to the authority in return for energy improvements for benefitted property owners within such municipality and costs reasonably incurred in performing such duties; and

(9) "Authority" means the Clean Energy Finance and Investment Authority.

(b) (1) The authority shall establish a commercial sustainable energy program in the state, and in furtherance thereof, is authorized to make appropriations for and issue bonds, notes or other obligations for the purpose of financing, (A) energy improvements; (B) related energy audits; (C) renewable energy system feasibility studies; and (D) verification reports of the installation and effectiveness of such improvements. The bonds, notes or other obligations shall

be issued in accordance with legislation authorizing the authority to issue bonds, notes or other obligations generally. Such bonds, notes or other obligations 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 benefit assessments on qualifying commercial real property, as authorized in this section.

(2) When the authority has made appropriations for energy improvements for qualifying commercial real property or other costs of the commercial sustainable energy program, including interest costs and other costs related to the issuance of bonds, notes or other obligations to finance the appropriation, the authority may require the participating municipality in which the qualifying commercial real property is located to levy a benefit assessment against the qualifying commercial real property especially benefited thereby.

(3) The authority (A) shall develop program guidelines governing the terms and conditions under which state financing may be made available to the commercial sustainable energy program, including, in consultation with representatives from the banking industry, municipalities and property owners, developing the parameters for consent by existing mortgage holders and may serve as an aggregating entity for the purpose of securing state or private third-party financing for energy improvements pursuant to this section, (B) shall establish the position of commercial sustainable energy program liaison within the authority, (C) shall establish a loan loss reserve or other credit enhancement program for qualifying commercial real property, (D) may use the services of one or more private, public or quasi-public third-party administrators to administer, provide support or obtain financing for the commercial sustainable energy program, and (E) shall adopt standards to ensure that the energy cost savings of the energy improvements over the useful life of such improvements exceed the costs of such improvements.

(c) Before establishing a commercial sustainable energy program under this section, the authority shall provide notice to the electric distribution company, as defined in section 16-1 of the general statutes, that services the participating municipality.

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

(1) Require performance of an energy audit or renewable energy system feasibility analysis on the qualifying commercial real property that assesses the expected energy cost savings of the energy improvements over the useful life of such improvements before approving such financing;

(2) If financing is approved, require the participating municipality to levy a benefit assessment on the qualifying commercial real property with the property owner in a principal amount sufficient to pay the costs of the energy improvements and any associated costs the authority determines will benefit the qualifying commercial real property;

(3) Impose requirements and criteria to ensure that the proposed energy improvements are consistent with the purpose of the commercial sustainable energy program;

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

(5) Require that the property owner provide written notice, not less than thirty days prior to the recording of any lien securing a benefit assessment for energy improvements for such property, to any existing mortgage holder of such property, of the property owner's intent to finance such energy improvements pursuant to this section.

(e) (1) The authority may enter into a financing agreement with the property owner of qualifying commercial real property. After such agreement is entered into, and upon notice from the authority, the participating municipality shall place a caveat on the land records indicating that a benefit assessment and lien is anticipated upon completion of energy improvements for such property.

(2) The authority shall disclose to the property owner the costs and risks associated with participating in the commercial sustainable energy program established by this section, including risks related to the failure of the property owner to pay the benefit assessment. The authority shall disclose to the property owner the effective interest rate of the benefit assessment, including fees charged by the authority to administer the program, and the risks associated with variable interest rate financing. The authority shall notify the property owner that such owner may rescind any financing agreement entered into pursuant to this section not later than three business days after such agreement.

(f) The authority shall set a fixed or variable rate of interest for the repayment of the benefit assessment amount at the time the benefit assessment is made. Such interest rate, as may be supplemented with state or federal funding as may become available, shall be sufficient to pay the financing and administrative costs of the commercial sustainable energy program, including delinquencies.

(g) Benefit assessments levied pursuant to this section and the interest, fees and any penalties thereon shall constitute a lien against the qualifying commercial real property on which they are made until they are paid. Such 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 such lien may be continued, recorded and released in the manner provided for property tax liens, subject to the consent of existing mortgage holders, and shall take precedence over all other liens or encumbrances except a lien for taxes of the municipality on real property, which lien for taxes shall have priority over such benefit assessment lien.

(h) Any participating municipality may assign to the authority any and all liens filed by the tax collector, as provided in the written agreement between the participating municipality and the authority. The authority may sell or assign, for consideration, any and all liens received from the participating municipality. The consideration received by the authority shall be negotiated between the authority and the assignee. The assignee or assignees of such liens shall have and possess the same powers and rights at law or in equity as the authority and the participating municipality and its tax collector would have had if the lien had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection. The assignee 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. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to this section and directly related to the proceeding shall be taxed in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.