

SENATE No. 1774

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>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>

SENATE No. 1774

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 1774) of Brian A. Joyce, Chris Walsh, Jay D. Livingstone, Frank I. Smizik and other members of the General Court for legislation to fuel job creation through energy efficiency. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2255 OF 2013-2014.]

The Commonwealth of Massachusetts

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

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 is hereby amended by adding the
2 following section:-

3 Section 46. (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 commercial or
6 industrial property in relation to energy improvements established under the commercial
7 sustainable energy program that has been duly assessed in accordance with chapter 80.

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

11 “Commercial or industrial property”, any real property other than a residential dwelling
12 containing fewer than 5 dwelling units.

13 “Commercial 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”, (i) any renovation, retrofitting or installation of qualifying
18 commercial or industrial property to reduce energy consumption or installation of a renewable
19 energy system to serve qualifying commercial or industrial property; provided, however, that the
20 renovation, retrofit or installation shall be permanently fixed to the qualifying commercial or
21 industrial property; or (ii) the construction of an extension of an existing natural gas distribution
22 company line to provide natural gas distribution service to a qualifying commercial or industrial
23 property to displace its utilization of fuel oil, electricity or other conventional energy sources.

24 “Financing entity”, the agency or a special purpose entity duly authorized by the agency.

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

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

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

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

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

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

45 (2) Upon the approval of a PACE project by the department, pursuant to subsection 13 of
46 section 6 of chapter 25A of the General Laws, the financing entity may issue PACE bonds. The
47 PACE bonds shall be issued in accordance with section 8; provided, however, that the agency
48 shall not be required to make the findings required by subsections (a) and (b) of said section 8.
49 PACE bonds issued pursuant to this section shall not be subject to or otherwise included in the

50 principal amount of debt obligations issued under section 29. PACE bonds may be secured as to
51 both principal and interest by a pledge of revenues derived from the commercial sustainable
52 energy program, including revenues from betterment assessments on qualifying commercial or
53 industrial property on which the PACE projects being financed by the issuance of the PACE
54 bonds are located and any reserve funds or other credit enhancements created under the
55 commercial sustainable energy program.

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

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

73 and (C) use the services of 1 or more private, public or quasi-public third-party administrators to
74 administer, provide support or obtain financing for PACE projects under the commercial
75 sustainable energy program.

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

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

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

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

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

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

90 (vi) if the agency approves financing, require the participating municipality to levy a
91 betterment assessment in a manner consistent with this section and with chapter 80, as such
92 provisions may be applicable and consistent with this section, on the qualifying commercial or
93 industrial property in a principal amount sufficient to pay the costs of the energy improvements

94 and any associated costs, including agency costs, that the agency determines shall benefit the
95 qualifying commercial or industrial property.

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

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

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

116 funding, shall be sufficient to pay the principal and interest and may be calculated to include the
117 financing and administrative costs of the commercial sustainable energy program, including
118 delinquencies.

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

127 (h) Notwithstanding section 12 of chapter 80, betterment assessments levied pursuant to
128 this section and the interest, fees and any penalties on the betterment assessments shall constitute
129 a lien against the qualifying commercial or industrial property until they are paid and shall
130 continue notwithstanding any alienation or conveyance of the qualifying commercial or
131 industrial property by 1 property owner to a new property owner. A new property owner shall
132 take title to the qualifying commercial or industrial property subject to the betterment assessment
133 and lien. The lien shall be levied and collected in the same manner as the property taxes of the
134 participating municipality on real property including, in the event of default or delinquency, the
135 manner in which the participating municipality collects any penalties, fees, remedies and lien
136 priorities. Each lien may be continued, recorded and released upon repayment in full of the
137 benefit assessment in the manner provided for property tax liens. Each lien shall take precedence
138 over all other liens or encumbrances except a lien for taxes of the participating municipality on

139 real property. If benefit assessments are paid in installments and any such installment is not paid
140 when due, the benefit assessment lien may be foreclosed to the extent of any unpaid installment
141 payments and any penalties, interest and fees related to the unpaid installment payments. If the
142 benefit assessment lien is foreclosed, the betterment assessment lien shall survive the judgment
143 of foreclosure to the extent of any unpaid installment payments of the benefit assessment secured
144 by the benefit assessment lien that were not the subject of the judgment.

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

158 (j) The exercise of the powers granted pursuant to this section shall constitute the
159 performance of essential government functions and the financing entity shall not be required to
160 pay any taxes or assessments upon the property acquired or used by the financing entity or upon
161 the income derived from the property acquired or used by the financing entity under this section.

162 The PACE bonds issued under this section, their transfer and the income derived from their
163 transfer, including any profit made on the sale of the PACE bonds, shall not be subject to
164 taxation in the commonwealth.

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

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

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

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

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

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

183 exceeds the costs of the improvements. PACE Projects where all Energy Improvements, as
184 defined by subsection (a) of section 46 of chapter 23G, are approved under, and participating in
185 the electric or gas efficiency investment plans set forth in Section 21 of Chapter 25, will not
186 require approval by the department.