

LAWS OF DELAWARE  
VOLUME 83  
CHAPTER 91  
151st GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 54

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE DELAWARE VOLUNTARY CLEAN ENERGY FINANCING PROGRAM BASED ON PROPERTY ASSESSMENTS (D-PACE) OR OTHER LOCAL ASSESSMENT STATUTE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8061, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(d) The SEU shall establish a D-PACE Program in the State to fund qualifying energy improvements to commercial real property, such that the improvements, property, and owner or owners fulfill the requirements enumerated herein, and those established by the SEU as part of the administration of the program.

(1) If a benefited property owner requests D-PACE financing from the SEU or a third-party capital provider for qualifying energy improvements under this section, the SEU shall:

- a. Require performance of an SEU approved energy audit or feasibility analysis of such qualifying energy improvements on the qualifying commercial real property that assesses the expected energy cost savings over the useful life of such improvements unless a qualifying energy improvement is deemed automatically qualified by the SEU;
- b. Require an evaluation of the property owner's credit, history, and other financial obligations, before approving such financing;
- c. If financing is approved, either by the SEU or the third-party capital provider, require the participating county 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 improvements and any associated costs covered by the D-PACE Program that will benefit the qualifying commercial real property;
- d. Impose requirements and criteria to ensure that the proposed improvements are consistent with the purpose of the D-PACE Program;
- e. 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;
- f. Require that written consent for a superior lien from all existing properly recorded lien holders be obtained before any improvements are financed or made; and
- g. Allow the property owner to rescind any D-PACE financing agreement entered into, with either the SEU or a third-party capital provider, not later than 3 business days after such an agreement.

(2) SEU shall collect fees to offset costs associated with executing the program, including but not limited to, administrative costs, conducting feasibility studies, and monitoring and verifying project results.

(3) The SEU may serve as an aggregating entity for the purpose of securing public, foundation, or private third-party financing for qualifying energy improvements pursuant to this section.

(4) The SEU may use the services of 1 or more private, public or quasi-public third-party administrators to administer, provide support, or obtain financing for the D-PACE Program.

(5) The benefit assessment:

a. May cover up to 100% of project costs, including but not limited to, application fees, audits, equipment, maintenance, labor, and other costs directly related to the project over the project's life;

b. May also cover a portion of the D-PACE Program costs;

c. May be neither extinguished nor accelerated in the event of default or bankruptcy; and

d. Shall be levied and collected as to assessment payments currently and past due in the same manner as the property assessments of the participating county government on real property.

(6) The benefit assessment shall constitute a lien against the qualifying commercial real property on which the qualifying energy improvements are made. This lien shall:

a. Be superior to any other liens except the lien for other property taxes and other governmental service assessments of the participating county and other municipalities and share the same senior lien as other property taxes and governmental service assessments to the extent only of the amount of the DPACE assessments, penalties and fees currently due and/or in arrears;

b. Remain with the real property upon sale, including sale or transfer by operation of a tax monition sale or mortgage foreclosure, regardless of method; and

c. In the event of default or delinquency, be pursued in the same manner as with other property assessments, with respect to any penalties, fees and remedies and lien priorities; provided that ~~in any event a~~ notwithstanding any other provision of law including without limitation the provisions regarding the discharge of liens contained in 9 Del. C. § 8761 and 9 Del. C. § 8773, in any event a tax sale or other foreclosure sale brought by the SEU or a third-party capital provider with respect to D-PACE assessments shall not have the effect of extinguishing any subordinate mortgage liens against the qualifying commercial real property. Notwithstanding the foregoing or any other provision of law:

1. The SEU and third-party capital providers shall not have the authority to pursue a foreclosure of benefit assessment liens by the monition method established pursuant to 9 Del. C. § 8721 et seq. but shall have the authority to pursue a foreclosure of benefit assessment liens by attachment methods pursuant to 9 Del. C. § 8771 et seq. and 9 Del. C. § 8741 et seq.

2. The tax collecting authority in a monition sale may collect in such sale, in addition to taxes, D-PACE assessments but to the extent only of the DPACE assessments, penalties, and fees currently due or in arrears.
3. The provisions above with respect to not extinguishing subordinate mortgage liens shall not apply in the case of a sale by monition method brought by a tax collecting authority, regardless of whether D-PACE assessments are collected at such sale.
4. The SEU and third-party capital providers shall not be required to, nor shall they have the authority to, unless so directed by the applicable tax collecting authority, foreclose liens for property taxes and other governmental service assessments or collect such taxes and assessments in a sale with respect to D-PACE assessments.
5. The SEU and third-party capital providers shall not be required to pay proceeds upon a tax or other sale to collect D-PACE assessments to holders of subordinate mortgage liens.

Approved July 30, 2021