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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 113

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO A DELAWARE VOLUNTARY
CLEAN ENERGY FINANCING PROGRAM THROUGH LOCAL GOVERNMENT ASSESSMENTS.

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

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

3 §8061 Delaware Voluntary Clean Energy Financing Program Based on Property Assessments (D-PACE) or Other
4 Local Assessments.

5 (a) The General Assembly finds and declares that:

6 (1) The production and efficient use of energy will continue to play a central role in the economic future
7 and environmental sustainability of Delaware and the nation as a whole; and

8 (2) The development, production, and efficient use of clean energy will strengthen the economy, improve
9 the public and environmental health of this state, and contribute to the energy security of our nation; and

10 (3) The financing of clean energy systems and energy efficient technologies, and the powers conferred
11 and expenditures made pursuant to this statute, will serve a valid public purpose and that the enactment of
12 this statute is expressly declared to be in the public interest.

13 (b) It is the purpose and intent of the General Assembly:

14 (1) To establish a voluntary commercial property assessed clean energy program in the state to provide
15 access to financing for clean energy systems and energy efficient technologies with free and willing
16 commercial property owners of both existing properties and new construction within the State of
17 Delaware.

18 (2) To utilize the Sustainable Energy Utility and the unique capabilities and qualities inherent within its
19 structure and finances to launch a commercial voluntary assessed clean energy program that ensures the
20 private capital markets can participate in this program.

21 (c) Definitions:

22 (1) "Delaware Voluntary Property Assessed Clean Energy program" or "D-PACE program" means a

23 program that facilitates reductions in energy production and consumption and utilizes the benefit
24 assessments authorized by this section as security for the financing of these qualifying energy
25 improvements;

26 (2) "Benefit assessment" means a voluntary property assessment or other government service fee
27 assessment, as authorized by this section, which is the mechanism through which a commercial property
28 owner repays the financing for the qualifying energy improvements;

29 (3) "Benefited property owner" means an owner of qualifying commercial real property who desires to
30 install qualifying energy improvements and provides free and willing consent to the benefit assessment
31 against the qualifying commercial real property;

32 (4) "Qualifying energy improvements" means any construction, renovation or retrofitting of energy
33 efficient technology, clean energy systems, or qualifying waste heat recovery technologies that are
34 permanently fixed to qualifying commercial real property;

35 (5) "Energy efficient technologies" means any device or piece of equipment, used in conjunction with
36 existing infrastructure and appliances or as a replacement, that reduces energy consumption, but does not
37 itself generate energy;

38 (6) "Clean energy systems" means renewable energy power generation including solar photovoltaic and
39 thermal, wind, biomass, or geothermal and including waste heat recovery and other zero or net-zero
40 emission energy sources available with advancing technology;

41 (7) "Qualifying waste heat recovery technologies" means equipment and processes that capture the waste
42 thermal energy from electric generation and other waste heat sources for use in non-power generating
43 commercial/industrial processes, including but not limited to space and water heating, in qualifying
44 commercial real estate where fossil fuel power generation is not the principal business;

45 (8) "Qualifying commercial real property" means any commercial property located in the State of
46 Delaware, regardless of ownership, that meets the qualifications established for the D-PACE program;

47 (9) "Commercial property" means any real property other than a residential dwelling containing less than
48 five dwelling units;

49 (10) "Energy Utilities" means Delmarva Power and Light, Chesapeake Utilities, Delaware Electric Co-
50 operative, Delaware Municipal Electric Corporation, or their successors as defined in Title 26, Chapter 10
51 of the Delaware Code;

52 (11) "County" means any county as defined in Title 9 of the Delaware Code, and as authorized by this

53 legislation or the SEU to issue benefit assessments;
54 (12) "Participating county" means a county that has entered into a written agreement, as approved by its
55 legislative body, with the D-PACE program pursuant to which the county has agreed to levy benefit
56 assessments for qualifying energy improvements for benefited commercial property owners within such
57 county and costs reasonably incurred in performing such duties;

58 (13) "SEU" means the Sustainable Energy Utility as defined in Title 29, Chapter 80 of the Delaware
59 Code; and

60 (14) "Third party capital provider" means one or more entities, other than the SEU, that provides
61 financing to benefited property owners for energy improvements.

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

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

67 a. Require performance of an SEU approved energy audit or feasibility analysis of such
68 qualifying energy improvements on the qualifying commercial real property that assesses the
69 expected energy cost savings over the useful life of such improvements unless a qualifying
70 energy improvement is deemed automatically qualified by the SEU;

71 b. Require an evaluation of the property owner's credit, history, and other financial obligations,
72 before approving such financing;

73 c. If financing is approved, either by the SEU or the third party capital provider, require the
74 participating county to levy a benefit assessment on the qualifying commercial real property
75 with the property owner in a principal amount sufficient to pay the costs of the improvements
76 and any associated costs covered by the D-PACE program that will benefit the qualifying
77 commercial real property;

78 d. Impose requirements and criteria to ensure that the proposed improvements are consistent
79 with the purpose of the D-PACE program;

80 e. Impose requirements and conditions on the financing to ensure timely repayment, including,
81 but not limited to, procedures for placing a lien on a property as security for the repayment of the
82 benefit assessment;

83 f. Require that written consent for a superior lien from all existing mortgage holders be obtained
84 before any improvements are financed or made; and
85 g. Allow the property owner to rescind any D-PACE financing agreement entered into, with
86 either the SEU or a third party capital provider, not later than three business days after such an
87 agreement.

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

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

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

94 (5) The benefit assessment:

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

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

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

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

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

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

108 b. Remain with the real property upon sale, including foreclosure; and

109 c. In the event of default or delinquency, be pursued in the same manner as with other property
110 assessments, with respect to any penalties, fees and remedies and lien priorities; provided that in
111 any event a foreclosure sale brought with respect to D-PACE assessments shall not have the
112 effect of extinguishing any subordinate mortgage liens against the qualifying commercial real

113 property.

114 d. Notwithstanding any other provision of law:

115 (A) At the time of a transfer of property ownership including foreclosure, the past due
116 balances of any special assessment under this subchapter shall be due for payment, but
117 future payments shall continue as a lien on the property.

118 (B) In the event of a foreclosure action, the past due balances described in subdivision (A)
119 immediately above shall include all payments on an assessment under this subchapter that
120 are due and unpaid as of the date the action is filed, and all payments on the assessment that
121 become due after that date and that accrue up to and including the date title to the property
122 is transferred to the mortgage holder, the lien holder, or a third party in the foreclosure
123 action. The person or entity acquiring title to the property in the foreclosure action shall be
124 responsible for payments on the assessment that become due after the date of such
125 acquisition.

126 (7) The liens created by benefit assessments may be assigned as follows:

127 a. Any participating county may assign to the SEU any and all liens filed by the tax collector, as
128 provided in the written D-PACE agreement between participating county and the SEU;

129 b. The SEU may sell or assign, for consideration, any and all liens received from the
130 participating county;

131 c. The assignee(s) of such liens shall have and possess the same powers and rights at law or in
132 equity as the participating county and its tax collector with regard to the precedence and priority
133 of such lien, the accrual of interest, the fees and expenses of collection, and lien enforcement
134 including, but not limited to, foreclosure and a suit on the debt; and

135 d. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure
136 action or other legal proceeding brought pursuant to this section and directly related to the
137 proceeding shall be assessed in any such proceeding against each person having title to any
138 property subject to the proceedings. Such costs and fees may be collected by the assignee at any
139 time after demand for payment has been made by the assignee.

140 (8) The SEU shall allow third party capital providers to provide loans directly to benefited property
141 owners in lieu of, or in addition to, the SEU providing such loans.

142 (9) Pursuant to the purpose and objectives outlined herein, and with respect to the responsibilities of

143 administering the D-PACE program, the SEU shall develop program guidelines governing the terms
144 and conditions under which financing may be made available to the D-PACE program, in consultation
145 with the Department of Natural Resources and Environmental Control, Division of Energy and
146 Climate, energy utilities, the banking industry, local governments, and commercial property owners;

147 The program guidelines document shall include:

148 a. Underwriting criteria, which at a minimum must include verification of ownership, an
149 assessment of property debt and value, an ability to pay evaluation, and for all financing
150 arrangements by the SEU and third party capital providers a savings to investment ratio
151 evaluation;

152 b. A requirement that the life of the improvements is greater than the term of the financing;

153 c. Qualifications for improvements, including but not limited to: minimum project life for cost-
154 effective, permanent application; minimum project value, consistent with ensuring the recapture
155 of applicable administrative costs; maximum project value and project value relative to property
156 value, consistent with local and national renewable and energy efficiency credit/funding
157 programs and ensuring mortgage lender support; and maximum renewable energy project size
158 consistent with local and national credit/funding programs, and with local energy service
159 company (utility) regulations;

160 d. Recommended energy efficiency improvements to qualified commercial property owners
161 seeking financing for clean energy generation systems;

162 e. Criteria for approving energy audits and auditors, selecting engineering reports for feasibility
163 analyses, and determining the appropriate method of analyzing expected energy performance for
164 D-PACE projects;

165 f. Standards for the processes of approval, financing, construction, repayment, including optional
166 repayment at the time of sale of the property and SEU, third party capital provider, and/or
167 participating county actions of recourse in the event of default;

168 g. Standards for monitoring and verifying the energy and cost savings and other relevant
169 outcomes of D-PACE funded projects, consistent with the project scale and scope, as well as the
170 goals of the D-PACE program;

171 h. A requirement to educate the property owner about the costs and risks associated with
172 participating in the D-PACE program established by this section, including but not limited to,

173 the effective interest rate of the benefit assessment, fees charged by the SEU to administer the
174 program, and the risks related to the failure of the property owner to pay the benefit assessment;
175 and
176 i. Greater detail on all program specifications, processes, and party duties as assigned to the SEU
177 in this bill, as well as all necessary program guidelines and other specifications consistent with
178 the administration of a statewide D-PACE program not listed herein.

179 (e) The SEU shall have the authority to:

180 (1) Issue debt to finance qualifying projects;

181 (2) Use principal and interest payments from existing benefit assessments to fund other projects;

182 (3) Use other legally available funds for project financing, including but not limited to, existing revenues,
183 federal, state, local, or philanthropic grants, or private financing, notes, or other obligations;

184 (4) Impose fees to offset costs associated with executing the financing, including but not limited to,
185 administrative costs, attorney fees, conducting feasibility studies, and monitoring and verifying
186 project results;

187 (5) Specify whether these fees are to be collected at certain steps or intervals, or added into the project
188 financing;

189 (6) Set a fixed or variable rate of interest for the repayment of the financing amount at the time the
190 financing is arranged, or allow a third party capital provider to set the interest rate, provided that party is
191 financing the improvements;

192 (7) Enter into a financing agreement with the owner of qualifying commercial real property, to include
193 billing and receiving payments from the participants (in the same manner property and government
194 service assessments are collected);

195 a. With approval of the participating county, transfer the rights and authorities of the financing
196 agreement, including but not limited to billing and receiving payments, to a third party capital
197 provider, such that the party is directly financing the qualified energy improvement.

198 (8) Establish a D-PACE Loss Reserve.

199 (g) The D-PACE program shall not be operational and available for commercial property owner
200 participation/financing until a comprehensive program guideline document is adopted by the SEU Board of Directors. Prior
201 to submission to the Board of Directors for adoption, the SEU shall:

202 (1) Organize a public hearing regarding the program guidelines document;

203 (2) Publish a notice to include the time, date, place of the public hearing, and a summary of the
204 nature of the guidelines in at least two Delaware newspapers of general circulation, and by electronic
205 posting on the SEU website, a minimum of twenty days prior to such hearing; and
206 (3) Provide the SEU Board of Directors minutes of the public hearing with the submission of the
207 program guidelines.

SYNOPSIS

This bill authorizes the creation of a Delaware Voluntary Property Assessed Clean Energy (D-PACE) program to establish a clean energy financing program for the installation of energy efficiency technologies and clean energy systems for qualifying commercial real properties statewide. PACE programs are authorized in more than 30 states nationwide. The financing will be secured by and payable from a voluntary assessment imposed on the property benefited by the qualifying energy improvement. The bill calls upon the Sustainable Energy Utility (SEU) to administer the program and establish a statewide financing program to aid counties in expanding clean energy projects in their jurisdictions. Projects under D-PACE can be financed through the SEU or other participating financial institutions.

Author: Senator McDowell