



**Statement of David E. Floreen, Special Advisor
Massachusetts Bankers Association
Regarding S 1774, an Act Fueling Job Creation through Energy Efficiency and
H 2889, An Act Promoting Energy Efficiency Improvements
Committee on Telecommunications, Utilities and Energy
June 30, 2015**

Good afternoon, I am David Floreen, special advisor, Massachusetts Bankers Association, which represents the nearly 170 commercial, cooperative, savings and federal savings banks located in Massachusetts. I appear today to offer comments on S 1774, An Act Fueling Job Creation through Energy Efficiency, legislation introduced by Senator Brian Joyce and co-sponsored by several other legislators. I also wish to record our opposition to H 2889, An Act promoting residential energy efficiency improvements filed by Rep. Stephen Kulik.

First, our Association and its member banks applaud the Legislature for its efforts over the past several years to enact various economic development and energy efficiency programs. Not every initiative generates as much success as predicted while others exceed expectations. Such is the nature of our capital economy. Massachusetts banks are very familiar with those dynamics as they work aggressively to underwrite loans to businesses across the Commonwealth and many have been aggressive leaders in proving financing to thousands of residential and commercial property owners to finance energy efficiency improvements.

S 1774 seeks to provide long-term financing to property owners to fund energy savings improvements to their properties. These loans would be for terms of twenty years with minimum balances starting around \$500,000. Since these loans would be funded through the capital markets, each loan would have to be sufficiently large to make the loan economically viable. Given those parameters, it appears that the primary market for these loans would be larger developments such as major manufacturing facilities, shopping malls, office parks or towers, possibly hospitals and universities, etc. where the energy efficiency improvements can be spread over a larger property and a longer period of time.

The legislation before you today is significantly improved over versions introduced in previous sessions. Fortunately, S 1774 does not contain language imposing an automatic priority, first-lien status for a so-called Property Assessed Clean Energy (PACE) loan. Based on a study mandated by the Legislature in 2012, which concluded that a priority lien was not viable, S 1774, in lines 87 to 89 requires that any property owner that wishes to participate in a PACE loan must obtain consent from any existing mortgage holder of the property with the intent to finance such energy improvements. The inclusion of this language removes a significant banking industry objection to the PACE loan concept and is essential to any final bill that might be enacted.

Earlier versions of this bill relied on creating a Massachusetts Energy Conservation Loan Fund, funded by a diversion of the system benefit charges currently paid by all electric and gas rate payers serviced by investor-owned utilities in Massachusetts. Fortunately, S 1774 removes that funding source and relies on capital markets and possibly state funds to support this initiative. Currently, the systems benefit charge funds the energy efficiency audits and assessments offered to all homeowners by Mass-Save, all the energy efficiency improvement programs provided to residential and commercial customers and the very successful zero interest HEAT loan programs that 74 Massachusetts banks and credit unions offer to residential and business customers.

Our Association and local banks worked closely with the utilities to develop this very popular program. For example in 2014, those 74 banks and credit unions made nearly \$110 million in no-interest residential HEAT loans to over 11,000 customers almost double the number in 2012. Through June 20 of this year, those institutions have made over \$40 million in loans to 4,130 customers. The commercial HEAT loan program has been far less successful, as the ratepayer must also be the borrower and there is little incentive for a tenant to finance any improvement to the property. This may be another indication that PACE programs are best targeted to the large properties where the owner is responsible for and would benefit from expansive energy efficiency improvements.

Perhaps the broader questions are; how many owners will take advantage of this program, how many properties will be improved, how many loans will be approved, what will the interest rates be and how streamlined will the application and approval process be? The experience in other states and here in Massachusetts with the commercial HEAT loan program suggests that projections of energy savings and job creation may be vastly overstated.

For example, Connecticut enacted its C-PACE commercial loan program in 2012. We understand that the program details took a long time to be finalized and that the number of projects approved has been very small. We anticipate a similar process under S 1774 as the application and approval process is rather lengthy, requires multiple approvals and a property must be located in a community that has approved participating the PACE program.

In conclusion, our Association believes that a commercial PACE loan program, properly structured that includes a tightly written provision ensuring that any first-lien holder must grant written permission before a PACE loan could be applied to a property with an existing recorded lien and that relies on capital markets for funding can be a viable option to finance certain energy efficiency projects in Massachusetts. We also encourage the Committee to consider enhancing existing energy efficiency programs and consider other financing mechanisms.

Reluctantly, we must strongly oppose H 2889, a companion bill that would establish a PACE loan program for residential properties. Unfortunately, this bill does not include language that requires the property owner to obtain written permission from any mortgage lender prior to securing a PACE loan. Rather, the language in lines 84 to 86 of H 2889 only requires the beneficial property owner to "notify" any existing mortgage holder of the qualifying residential property of the intent to finance energy improvements under this program. This creates several problems for both borrowers and lenders.

On December 22, 2014 the Federal Housing Finance Agency (FHFA) issued a statement warning homeowners, financial institutions and state authorities, citing its concern with super-priority liens created by either energy retrofit programs or homeowner association priority status. The FHFA statement (copy attached) reinforces a longstanding position because it is deeply concerned that a PACE "superlien" on a property forces the **Freddie Mac** or **Fannie Mae** lien into a secondary lien position, which the FHFA says increases the risk of losses to taxpayers. Since Freddie Mac and Fannie Mae provide secondary market financing to approximately 50 percent of all mortgage lending, this creates a major impediment to continued support of home buying finance.

"One of the bedrock principles in this process is that the mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning that they have first priority in receiving the proceeds from selling a house in foreclosure," the FHFA continued. "As a result, any lien from a loan added after origination should not be able to jump in line ahead of a Fannie Mae or Freddie Mac mortgage to collect the proceeds of the sale of a foreclosed property."