

**File Number:** H.F. 3688  
**Version:** First engrossment

**Date:** March 22, 2018

**Authors:** O'Driscoll

**Subject:** Consumer protections for PACE loans

**Analyst:** Bob Eleff

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: [www.house.mn/hrd/](http://www.house.mn/hrd/).

### Overview

House File 3688 is the product of a task force created during the 2017 session (Laws 2017, ch. 94, art. 10, § 27) to develop recommendations for consumer protections for the residential PACE (Property Assessed Clean Energy) program, which allows local governments to make loans to homeowners to install conservation improvements or renewable energy technologies that are repaid over time through assessments on the homeowner's property tax.

#### Section

- 1 [45.011] **Subd. 1. Scope.** Conforming language.
- 2 [46.04] **Subd. 1. General.** Conforming language.
- 3 [46.131] **Subd. 1. Examination for authority.** Provides that Dept. of Commerce examination fees will be assessed against residential PACE administrators.
- 4 [46.131] **Subd. 2. Assessment authority.** Provides that residential PACE administrators can be assessed to maintain the Dept. of Commerce.
- 5 [46.131] **Subd. 4. General assessment basis.** Provides that Dept. of Commerce assessments against residential PACE administrators shall be made on the basis of total business volume in the previous calendar year.
- 6 [46.131] **Subd. 11. Financial institutions account.** Places license and renewal fees under the PACE residential loan program in this account.
- 7 [216C.435] **Subd. 1. Scope.** Technical.

**Section**

- 8 [216C.435] **Subd. 2. Authority.** Excludes a residential PACE administrator from the definition of “authority.”
- 9 [216C.435] **Subd. 3a. Cost-effective energy improvements.** Definition.
- 10 [216C.435] **Subd. 3b. Commercial PACE loan program.** Definition.
- 11 [216C.435] **Subd. 3c. Commissioner.** Definition.
- 12 [216C.435] **Subd. 5a. Homeowner.** Definition.
- 13 [216C.435] **Subd. 6. Implementing entity.** Definition.
- 14 [216C.435] **Subd. 7b. PACE.** Definition.
- 15 [216C.435] **Subd. 8. Qualifying commercial real property.** Definition.
- 16 [216C.435] **Subd. 8a. Qualifying residential real property.** Definition.
- 17 [216C.435] **Subd. 10a. Residential PACE administrator.** Definition.
- 18 [216C.435] **Subd. 10b. Residential PACE loan contract.** Definition.
- 19 [216C.435] **Subd. 10c. Residential PACE contractor.** Definition.
- 20 [216C.435] **Subd. 10d. Residential PACE lien.** Definition.
- 21 [216C.435] **Subd. 10e. Residential PACE loan.** Definition.
- 22 [216C.435] **Subd. 10f. Residential PACE loan program.** Definition.
- 23 [216C.435] **Subd. 13. Vulnerable adult.** Definition.
- 24 [216C.436] **Subd. 1. Program purpose and authority.** Authorizes an implementing entity to establish a PACE program for commercial property,
- 25 [216C.436] **Subd. 1a. Scope.** Specifies that this section only applies to qualifying commercial real property, unless otherwise specified.
- 26 [216C.436] **Subd. 2. Program requirements.** Specifies that this subdivision applies to commercial real property.
- 27 [216C.436] **Subd. 5. Coordination with other programs.** Specifies that this subdivision applies to commercial real property.
- 28 [216C.436] **Subd. 7. Repayment.** Specifies that this subdivision applies to commercial real property.
- 29 [216C.436] **Subd. 8. Bond issuance; repayment.** Conforming language.
- 30 [216C.436] **Subd. 9. Supplemental funding sources.** Conforming language.
- 31 [216C.437] **Residential PACE loan program; authority; consumer protections.**  
**Subd. 1. Scope.** Specifies that this section applies only to loans offered to homeowners.  
**Subd. 2. Program purpose and authority.** Provides that an implementing entity may establish a residential PACE program, and may limit the number of properties for which a single homeowner can receive a PACE loan. A homeowner must be current on mortgage and property tax payments to be eligible to receive a loan.

## Section

**Subd. 3. Financing terms.** Establishes the maturity of a PACE loan (lesser of useful life of the energy improvement or 20 years) and the maximum principal amount (for conservation loans, lesser of 10% of property value or the installation costs of the improvements; for renewable energy systems, lesser of 20% of property value or installation costs).

**Subd. 4. PACE lien position.** Specifies that a residential PACE lien is subordinate to all other liens recorded prior to the PACE lien and to a first mortgage or deed of trust recorded after the PACE lien, and is superior to any other lien recorded after the PACE lien.

**Subd. 5. Lienholder notice.** Requires that written notice be given to the servicers of any mortgage or other lien on the property prior to the signing of a PACE loan contract and that these servicers provide written confirmation that entering the PACE loan contract does not cause default or activate any remedies under the mortgage loan or other agreement.

**Subd. 6. Licensing.** Requires a residential PACE administrator to obtain a license from the Dept. of Commerce before operating in Minnesota, and prescribes the information required on the license application.

**Subd. 7. Term of License.** Specifies a one-year term for a residential PACE administrator license.

**Subd. 8. Timely renewal.** Provides that if a renewal license application is filed on time and notice of denial has not been received, a person may operate as a residential PACE administrator.

**Subd. 9. Contents of renewal application.** Specifies contents of a license renewal application.

**Subd. 10. Cancellation.** Specifies actions required of a licensee cancelling a license.

**Subd. 11. Powers of the commissioner.** Specifies powers of the commissioner under this section.

**Subd. 12. Fees.** Specifies a fee of \$1,000 for an initial license, and \$500 for a renewal license.

**Subd. 13. Financial examinations.** Specifies records a licensee must keep in the event the commissioner conducts a financial examination.

**Subd. 14. Bond.** Requires an applicant for a residential PACE administrator license to file a surety bond of \$100,000 with the Dept. of Commerce, and how that amount fluctuates as the amount of PACE loans made by the administrator increases.

**Subd. 15. Annual reporting.** Requires a residential PACE administrator to report to the commissioner by March 31 each year.

**Subd. 16. Residential PACE loan contracts.** Specifies requirements for the contents of a residential PACE loan contract.

**Subd. 17. Underwriting.** Prohibits the execution of a residential PACE loan unless the administrator has verified the ability of the homeowner to repay the loan according to the specified indicators.

## Section

**Subd. 18. Oral confirmation.** Specifies the required contents of a recorded telephone conversation a residential PACE administrator must have with a homeowner prior to the execution of the loan.

**Subd. 19. Right to rescind a residential PACE loan contract.** Provides a homeowner the right to rescind a loan contract up to three days after execution, and specifies how the rescission must occur.

**Subd. 20. Rescission notice and form.** This subdivision specifies the exact content of a rescission form.

**Subd. 21. Installation of energy improvements.** Requires installation of energy improvements by a residential PACE contractor licensed by the Dept. of Labor and Industry. Prohibits discriminatory pricing for installations financed through a residential PACE loan. Requires an implementing entity to inspect all installations and conduct a performance verification of at least 10 percent of PACE-financed energy improvements.

**Subd. 22. Coordination with other programs.** Requires coordination of residential PACE loans with the applicable utility's conservation improvement program activities.

**Subd. 23. Retail and end use prohibited.** Prohibits the sale, transmission, or distribution of energy generated by a PACE-financed energy improvement.

**Subd. 24. Prohibited practices.** Prohibits certain practices by residential PACE administrators or contractors.

**Subd. 25. Relation to other laws.** Requires a residential PACE administrator to comply with specified state and federal statutes.

**Subd. 26. Special protection for low-income homeowners.** Prohibits a residential PACE administrator or contractor from entering into a PACE contract with a homeowner who qualifies for the free low-income weatherization program, the low-income home energy assistance program, and similar programs of the Minnesota Housing Finance Agency and energy utilities, unless the administrator or contractor first refers them to those programs.

**Subd. 27. Disclosures.** Specifies the exact language of a disclosure that must be provided to a homeowner regarding a residential PACE loan five days before loan execution, and requires an additional disclosure containing specific information that is approved by the commissioner.

**Subd. 28. Repayment.** Specifies how an implementing entity must secure, collect and ensure timely payments of a residential PACE loan.

**Subd. 29. Prepayment of loan.** Allows for loan prepayment at any time.

**Subd. 30. Preservation of claims and defenses.** Allows a subsequent homeowner the same rights as the original homeowner to assert any claims against a subsequent residential PACE administrator.

**Subd. 31. Standard of conduct; agency relationship.** Requires PACE administrators and contractors to act in good faith in the best interests of the

**Section**

homeowners. Specifies that all actions of a PACE contractor or subcontractor are considered an act of the administrator.

**Subd. 32. Remedies.** Lists remedies available to a homeowner aggrieved by violations of this section, and additional remedies available to a vulnerable adult.

**Subd. 33. Waivers not permitted.** Prohibits parties to a residential PACE contract from waiving any of the rights or requirements of this section.

**32 [290B.03] Subd. 1. Program qualifications.** Provides that a residential PACE lien does not disqualify a property from eligibility for the senior citizens' property tax deferral program.

**33 Repealer.** Repeals Minnesota Statutes 2016, section 216C.435, subdivision 5, defining "energy improvement." (See sec. 9)