



January 12, 2017

Senator Gary Dahms, Chair  
Commerce and Consumer Protection Finance and  
Policy Committee  
95 University Avenue W.  
Minnesota Senate Bldg., Room 2111  
St. Paul, MN 55155

Senator David Osmek, Chair  
Energy and Utilities Finance and Policy Committee  
95 University Avenue W.  
Minnesota Senate Bldg., Room 2107  
St. Paul, MN 55155

Senator Dan Sparks  
Ranking Minority Member  
Commerce and Consumer Protection Finance and  
Policy Committee  
95 University Avenue W.  
Minnesota Senate Bldg., Room 2201  
St. Paul, MN 55155

Senator John Marty  
Ranking Minority Member  
Energy and Utilities Finance and Policy Committee  
95 University Avenue W.  
Minnesota Senate Bldg., Room 2401  
St. Paul, MN 55155

Representative Pat Garofalo, Chair  
Job Growth and Energy Affordability Policy and  
Finance Committee  
485 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Representative Tim Mahoney  
Ranking Minority Member  
Job Growth and Energy Affordability Policy and  
Finance Committee  
345 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Representative Karen Clark  
Ranking Minority Member  
Job Growth and Energy Affordability Policy and  
Finance Committee  
273 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Representative Jean Wagenius  
Ranking Minority Member  
Job Growth and Energy Affordability Policy and  
Finance Committee  
251 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Dear Committee Chairs and Minority Leads:

In 2017, Minnesota Session Law Chapter 94, Article 10, Section 27 established the Residential PACE Consumer Protection Legislation Task Force, chaired by the Minnesota Department of Commerce. Chapter 94 directed the Task Force to develop recommendations for consumer protection legislation related to the Residential Property Assessed Clean Energy (PACE) program

and to submit a report including any draft legislation necessary to implement the recommendations of the Task Force by January 15, 2018. The report, including the draft legislation, is attached.

Sincerely,

A handwritten signature in black ink that reads "Jessica Looman". The signature is written in a cursive, flowing style.

Jessica Looman  
Commissioner

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# Residential PACE Consumer Protection Legislation Task Force

Report to the Legislature  
01/12/2018

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# Executive Summary

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In 2017, Minnesota Session Law Chapter 94, Article 10, Section 27 established the Residential PACE Consumer Protection Legislation Task Force, chaired by the Minnesota Department of Commerce. The Task Force was directed to develop recommendations for consumer protection legislation related to the Residential Property Assessed Clean Energy (PACE) program and to submit a report including any draft legislation necessary to implement the recommendations of the Task Force by January 15, 2018. Chapter 94 also suspended residential PACE in Minnesota until legislation is enacted establishing consumer protections that are identified in the Task Force legislation.

The Task Force was directed to review and evaluate the following issues related to residential PACE programs:

1. Address concerns regarding the possible constraints on free alienation (the sale of) of residential property caused by existence and amount of the PACE liens;
2. Reduce and minimize any point-of-sale confusion in transactions involving PACE-encumbered homes;
3. Ensure conspicuous and meaningful disclosure of, among other things:
  - o all costs and fees of a residential PACE assessment; and
  - o the risks, such as foreclosure and higher costs, that may be associated with residential PACE assessments relative to other financing mechanisms;
4. Ensure that the ability to repay standard uses commonly accepted underwriting principles;
5. Ensure that consumer provisions required of and protections that apply to conventional loans and other financing options, including but not limited to the Truth in Lending Act and the Real Estate Settlement Procedures Act, are required of and apply to PACE financing;
6. Address any unique protections necessary for elderly, low-income homeowners and other financially vulnerable homeowners;
7. Establish criteria to ensure the cost-effectiveness of PACE-enabled clean energy improvements; and
8. Address any other issues the Task Force identifies that are necessary to protect consumers.

This report presents the Task Force's deliberations, findings and recommendations.

## Background

PACE is a financing mechanism that allows local governments to extend the use of real property secured financing to fund various types of energy-related projects on private property. These projects are typically those that can help to advance goals related to reducing greenhouse gas emissions through various types of energy conservation or use of renewable energy. Typical PACE enabling legislation across the country gives authority to various levels of local governments to contract with private parties who act as an administrator and offer financing to businesses or homeowners for these projects. In the residential setting, the homeowner then agrees to the financing through a voluntary special assessment billed and collected by the local government through the homeowner's property taxes. The local government will then issue some form of revenue bonds for these programs. In Minnesota, this type of PACE enabling legislation was first passed in 2010, and amended in 2013. It allowed both commercial and residential PACE programs.

PACE programs have been generally authorized in approximately 31 states. Of the 14 states that permit residential PACE, only three states (California, Florida, and Missouri) have active residential programs in place.

## **Task Force discussions and deliberations**

The Task Force discussions and deliberations are focused on residential PACE program issues as listed in the Task Force legislation.

### **PACE Liens**

Some members of the Task Force identified the lien position as a major issue to the future of the residential PACE program. Current law allows PACE financing to occupy a superior lien position to all other liens, including mortgages, because it is a special assessment collected through property taxes. The failure to pay the PACE assessment would result in delinquent property taxes and potentially subject a property to tax forfeiture and foreclosure. In the three states with an operational residential PACE program, the special assessment is in priority lien position.

### **Point-of-sale Confusion and Disclosures**

PACE obligations are often the result of a contractor offering financing options to a homeowner as part of a home improvement project that fits within the PACE criteria. The point-of-sale is the time from the homeowner being informed about the PACE option to when a consumer signs a contract to commit to the use of PACE financing. This process can happen at the home of a consumer at the same time the contractor is bidding out a project. The Task Force discussed the potential issues associated with this type of point-of-sale interaction, as well as what disclosures are necessary for consumer protection.

### **Ability to Repay and Consumer Provisions from TILA and RESPA**

The Task Force deliberations on ability to repay centered on whether PACE assessments should be treated similar to mortgages, or whether there is another standard to ensure robust underwriting without requiring PACE financing to comply with underwriting standards such as the Truth-in-Lending Act (TILA) or the Real Estate Settlement Procedures Act (RESPA) that are used in mortgages. Discussion of TILA and RESPA provisions as they may relate to PACE led the Task Force to examine the right of rescission, confirmation of the ability to repay, ensuring a legitimate benefit from the transaction, and ensuring no undisclosed kickbacks that increase the cost to consumers.

### **Protections for elderly, low-income, and financially vulnerable homeowners**

In addition to the consumer protections discussed in the other parts of the report, the Task Force discussed how to ensure that those who qualify for other lower-cost or free programs will still have access to these resources. These resources can be in the form of grants or low-interest loans through other non-profits, or government-based programs such the Conservation Improvement Program, the Weatherization Assistance Program, and programs offered through the Minnesota Housing Finance Agency.

## **Cost effectiveness of PACE-enabled energy improvements**

The Task Force was provided information on how cost-effectiveness is currently determined for energy efficiency projects. The Task Force also discussed the energy audit requirements as well as the renewable energy system feasibility study in the current law.

## **Emergency Repairs**

Emergency repairs that relax some parts of the PACE application process was an issue discussed by the Task Force. While some members of the Task Force expressed interest in relaxing the PACE application process in emergency situations, such as replacement of a failed furnace, other members of the Task Force are not convinced that PACE is the best option for emergency situations.

## **Task Force Recommendations**

The Task Force discussed two versions of potential draft legislation. Renovate America (representing an organization with experience implementing residential PACE programs in other states) submitted one version, as seen in Appendix A. A coalition consisting of the Minnesota REALTORS®, Legal Services Advocacy Project, the Minnesota Bankers Association, the Center for Energy and Environment and the Minnesota Credit Union Network (the Coalition) submitted the version seen in Appendix B. The Task Force then went through a side-by-side comparison of the two bills, and Task Force members and the public were asked for comments. All members provided comments on the draft legislation.

## **Lien Position**

The issue of lien position remains the main issue on which there is significant disagreement, and many of the Task Force members see the issue as unresolvable by the Task Force. The Coalition draft subordinates the residential PACE lien to that of any mortgages on the property. Renovate America states that the PACE concept is not workable without the PACE lien retaining its superior position, which is maintained in their draft.

## **Commercial PACE**

No member of the Task Force favors making any material change to the commercial PACE program in Minnesota.

## **Energy Audit**

Most parties are willing to remove or amend the energy audit requirements for residential PACE. The Coalition proposal requires that energy efficiency projects still meet eligibility under the Conservation Improvement Program requirements. The Renovate America proposal creates an Eligible Measures list that would be approved by local governments and implementing entities.

## **Ability to Repay**

Both proposals adopt much more stringent standards for ability to repay for residential PACE. The Renovate America bill would closely adopt the new California standards for income verification and residual income test. The Coalition bill includes the use of a ratio of total monthly debt to total monthly income similar to that found in qualified mortgage underwriting standards as its base starting point. Both proposals do have provisions that

would ensure that a residential PACE obligation could not cause a property to have a total loan-to-value ratio greater than 100% of the value of the property. The proposals also maintain the requirements to coordinate with other private and public programs that may provide the same services to eligible homeowners.

### **Disclosures**

Both proposals enhance the required disclosures to ensure consumers have a better understanding of the residential PACE obligation, including many of the potential risks. Both bills incorporate some right to rescind, with one at 3 days and the other at 7 days. They also both require some type of oral confirmation call after the homeowner initially e-signs the contract in order to assure that they understand the terms.

### **Contractor Standards**

Both proposals also put into place requirements to ensure that contractors are held to certain standards and prevent potential abuses that would harm consumers.

### **Emergencies**

The Task Force is still concerned with the waiver of income verification or underwriting standards for emergency repairs. This is because a homeowner may be at their most vulnerable, and the Task Force wants to ensure that consumers can make a sound choice in regards to their options even in this type of situation.

### **Oversight of Residential PACE Administrators**

Finally, the Coalition proposal recommends that the residential PACE administrators be subject to registration and oversight by the Department of Commerce. Although not an included provision in its draft bill, Renovate America has stated it is not opposed to some form of state oversight.



# Introduction

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2017 Minnesota Session Law Chapter 94, Article 10, Section 27 established the Residential PACE Consumer Protection Legislation Task Force, chaired by the Minnesota Department of Commerce. The Task Force was directed to develop recommendations for consumer protection legislation related to the Residential Property Assessed Clean Energy (PACE) program and to submit a report including any draft legislation necessary to implement the recommendations of the Task Force by January 15, 2018.

Chapter 94 also suspended residential PACE in Minnesota until legislation is enacted establishing consumer protections that are identified in the Task Force Duties section below.

## Task Force Duties

The Task Force was charged with developing recommendation to:

1. Address concerns regarding the possible constraints on free alienation of residential property caused by existence and amount of the PACE liens;
2. Reduce and minimize any point-of-sale confusion in transactions involving PACE-encumbered homes;
3. Ensure conspicuous and meaningful disclosure of, among other things:
  - a. all costs and fees of a residential PACE assessment; and
  - b. the risks, such as foreclosure and higher costs, that may be associated with residential PACE assessments relative to other financing mechanisms;
4. Ensure that the ability to repay standard uses commonly accepted underwriting principles;
5. Ensure that consumer provisions required of and protections that apply to conventional loans and other financing options, including but not limited to the Truth in Lending Act and the Real Estate Settlement Procedures Act, are required of and apply to PACE financing;
6. Address any unique protections necessary for elderly, low-income and other financially vulnerable homeowners;
7. Establish criteria to ensure the cost-effectiveness of PACE-enabled clean energy improvements; and
8. Address any other issues the Task Force identifies that are necessary to protect consumers.

## Roles and Responsibilities

The Task Force adopted the following roles and responsibilities for its members.

### ***Department of Commerce***

Convene Task Force, coordinate and facilitate meetings, provide technical assistance, compile research, develop meeting process and agendas, document meetings, provide research and support, write report, work with Revisor's Office to draft legislation and deliver the report to the Legislature on behalf of the Task Force.

## Task Force Members

Provide expertise, resources and information to the Task Force; assist in drafting the report.

## Membership

The Task Force consisted of the following members:

- Anne O’Connor, Minnesota Department of Commerce (Chair)
- Sue Basiago, Minnesota Land Title Association
- Chris Duffrin, Center for Energy and Environment
- Paul Eger, Minnesota REALTORS®
- Ron Elwood, Legal Services Advocacy Project
- Mary Jo George, AARP Minnesota
- Mara Humphrey, Minnesota Credit Union Network
- Craig Johnson, League of Minnesota Cities
- Janet Johnson, Minnesota Bankers Association
- John Kearney, Minnesota Solar Energy Industry Association
- Peter Klein, Saint Paul Port Authority
- Annie Levenson-Falk, Citizens Utility Board of Minnesota
- Emily Murray, Association of Minnesota Counties
- Will Nissen, Fresh Energy
- Logan O’Grady, Clean Energy Economy Minnesota
- Julie Padilla, Renovate America (representing an organization with experience implementing residential PACE programs in other states)

## Process

The Task Force attempted to address each duty charged during a series of meetings, focusing on one to two issues per meeting. The following timeline was adopted and followed.

Meeting Focus		Date
1.	<b>Organization and Building Common Knowledge</b> <ul style="list-style-type: none"> <li>▪ Frame the issue</li> <li>▪ Define scope and goals</li> <li>▪ Overview of PACE</li> <li>▪ Additional presentations to build common knowledge</li> <li>▪ Future meeting organization</li> <li>▪ Task Force timeline</li> </ul>	<b>Friday, July 14, 2017</b> 9:00 – 12:00 pm Skjegstad Room, MN Dept. of Revenue
2.	<b>Knowledge Building (Continued)</b> <ul style="list-style-type: none"> <li>▪ PACE Big Picture (NASEO)</li> </ul>	<b>Thursday, July 27, 2017</b> 9:00 – 12:00 pm

	<ul style="list-style-type: none"> <li>▪ Department of Energy Guidelines</li> <li>▪ Lender Requirements</li> <li>▪ Contractor Requirements</li> <li>▪ Energy Improvement Requirements</li> <li>▪ State Statute Comparisons</li> <li>▪ Renovate America Presentation</li> </ul>	Room 295, Commerce Dept.
3.	<p><b>Consumer Protections (Subd. 3 (5))</b></p> <ul style="list-style-type: none"> <li>▪ Ensure consumer provisions required and protections that apply to conventional loans and other financing options, including but not limited to the Truth in Lending Act and the Real Estate Settlement Procedures Act, are require of and apply to PACE financing.</li> </ul>	<p><b>Wednesday, August 9, 2017</b></p> <p>1:00 – 4:00 pm</p> <p>Room 295, Commerce Dept.</p>
4.	<p><b>Transactions involving PACE-encumbered Homes (Subd. 3 (2))</b></p> <ul style="list-style-type: none"> <li>▪ Reduce and minimize any point-of-sale confusion in transaction involving PACE-encumbered homes</li> </ul> <p><b>Disclosures (Subd. 3 (i) and ii))</b></p> <ul style="list-style-type: none"> <li>▪ Ensure conspicuous and meaningful disclosure of, among other things: all costs and fees of a residential PACE assessment; and the risks, such as foreclosure and higher costs, that may be associated with residential PACE financing relative to other financing mechanisms.</li> </ul>	<p><b>Thursday, August 24, 2017</b></p> <p>9:00 – 12:00 pm</p> <p>Skjegstad Room, MN Dept. of Revenue</p>
5.	<p><b>PACE Liens (Subd. 3 (1))</b></p> <ul style="list-style-type: none"> <li>▪ Address concerns regarding possible constraints on free alienation of residential property causes by existence and amount of PACE liens</li> </ul>	<p><b>Thursday, September 7, 2017</b></p> <p>9:00 – 12:00 pm</p> <p>Skjegstad Room, MN Dept. of Revenue</p>
6.	<p><b>Ability to Repay (Subd. 3 (4))</b></p> <ul style="list-style-type: none"> <li>▪ Ensure that the ability to repay standard uses commonly accepted underwriting principles</li> </ul> <p><b>Protections for Vulnerable Homeowners (Subd. 3 (6))</b></p> <ul style="list-style-type: none"> <li>▪ Address unique protections necessary for elderly, low-income homeowners and other financially vulnerable homeowners.</li> </ul>	<p><b>Thursday, September 21, 2017</b></p> <p>9:00 – 12:00 pm</p> <p>Skjegstad Room, MN Dept. of Revenue</p>
7.	<p><b>Cost Effectiveness (Subd.3 (7))</b></p> <ul style="list-style-type: none"> <li>▪ Establish criteria to ensure the cost-effectiveness of PACE-enabled clean energy improvements</li> </ul>	<p><b>Thursday, October 5, 2017</b></p> <p>9:00 – 12:00 pm</p> <p>Room 2308, MN Senate Building</p>
8.	<p><b>Other Issues (Subd. 3 (8))</b></p>	<p><b>Thursday, October 19, 2017</b></p> <p>9:00 – 12:00 pm</p> <p>Room 1150, MN Senate Building</p>
9.	<p><b>Draft report and legislation</b></p> <ul style="list-style-type: none"> <li>▪ Commerce staff draft report</li> </ul>	<p><b>November 2017</b></p>

10.	<b>Completed draft report sent to Task Force Members</b>	<b>Friday, November 17, 2017</b>
11.	<b>Task Force meeting to review draft report</b>	<b>Thursday, November 30, 2017</b> 9:00 – 12:00 pm Room 2308, MN Senate Building
12.	<b>Continuation of meetings to review draft report and legislation</b>	<b>Thursday, December 7, 2017</b> 9:00 – 12:00 pm Room 2412, MN Senate Building
13.	<b>Continuation of meetings to review draft report and legislation</b>	<b>Tuesday, December 12, 2017</b> 9:00 – 12:00 pm Room 2412, MN Senate Building
14.	<b>Final Task Force meeting and approval of report and legislation</b>	<b>Thursday, January 4, 2018</b> 9:00 – 12:00 pm Room 1150, MN Senate Building
<b>Task Force recommendations sent to Legislature</b>		<b>January 15, 2018</b>

# Background

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## History and Policy Related to PACE

During the last ten years, there has been a considerable effort at the national, state, and local levels to develop public policy goals to produce significant reductions in greenhouse gas emissions. Many of the policies have been directed at electric power and natural gas energy systems and their consumers to increase renewable energy generation, and reduce consumption through energy efficiency. In 2007, Minnesota passed the bipartisan Next Generation Energy Act with the following objectives:

- 25% renewable electricity production by 2025 (In 2013, a solar energy standard of 1.5% by 2020 was added to the renewable electricity standard)<sup>1</sup>
- 1.5% annual energy efficiency resource standard<sup>2</sup>
- 80% reduction of greenhouse gas emissions below 2005 levels by 2050<sup>3</sup>

In subsequent years, a variety of regulatory, financial and programmatic mechanisms were created or adapted to help various actors contribute toward achieving these objectives, including Property Assessed Clean Energy (PACE) financing in the commercial and residential markets.

When permitted by state law, commercial and residential PACE financing programs allow state and local governments to extend the use of land-secured financing and a special assessment on property taxes to fund energy efficiency, renewable energy, and water conservation improvements on private property.<sup>4</sup> At a national level, PACE financing programs were introduced in California in 2007. More than 30 other states followed suit, passing enabling legislation.<sup>5</sup>

As it relates to residential PACE, in 2010 companies began working with local governments to develop public-private partnerships and began developing services in a few states to implement residential PACE projects. Subsequently, the Federal Housing Finance Agency (FHFA) raised concerns regarding the financial risks of PACE financing and prohibited Fannie Mae and Freddie Mac from purchasing or refinancing PACE-encumbered mortgages. During the same period, the US Department of Energy (DOE) issued recommended *Best Practice Guidelines for Residential PACE Financing Programs* that included information on financing eligibility criteria, ability to repay standards, consumer protections, consumer education practices, and underwriting criteria, among others. In 2012, FHFA opened rulemaking on the issue, but withdrew the proposed rule a year later. In December of 2014, the FHFA issued a statement reiterating its position and to “make clear to homeowners, lenders, other

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<sup>1</sup> Minn. Stat. § 216B.1691 <https://www.revisor.mn.gov/statutes/?id=216B.1691>

<sup>2</sup> Minn. Stat. § 216B.2401 <https://www.revisor.mn.gov/statutes/?id=216B.2401>

<sup>3</sup> Minn. Stat. § 216H.02 <https://www.revisor.mn.gov/statutes/?id=216H.02>

<sup>4</sup> Note: under Minnesota’s PACE law, only cost-effective energy efficiency and renewable energy improvements are allowed. See Minn. Stat. §§ 216C.435, subd. 5 (definition of energy improvement) and 216C.436, subd. 1 (program authority).

<sup>5</sup> <http://pacenation.us/pace-programs/>

financial institutions, state officials, and the public that Fannie Mae and Freddie Mac’s policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it.” In August 2015, the Federal Housing Administration (FHA), a separate entity that provides mortgage insurance for FHA approved lenders, issued guidance providing that properties with residential PACE assessments in a priority lien position could be purchased and refinanced with FHA insured mortgages. That guidance was reversed on December 7, 2017, when the US Department of Housing and Urban Development announced that the FHA will no longer guarantee new PACE-encumbered mortgages.

In November 2016, the DOE revised its guidelines. Included in these revisions were: (1) enhanced PACE eligibility criteria, requirements for review of income, existing debt obligations and credit score; (2) clear and understandable consumer disclosures of all PACE terms, including interest rates and fees, repayment procedures, and lien requirements; and (3) additional consumer protections for low-income households, including enhanced screening procedures, written disclosures, and recommendations to structure PACE financing to be cost-effective for low-income participants. There were also recommendations for quality assurance, contractor management, and enforcement procedures. Note that the DOE Guidelines are recommendations only and do not have the force and effect of law.

In November 2017, Senator Crapo introduced a bi-partisan banking reform bill, S. 2155, which includes language that would require the Consumer Financial Protection Bureau (CFPB) to promulgate regulations related to income-based underwriting for PACE, recognizing that PACE is not appropriately regulated as an existing product under the Truth in Lending Act (TILA).

## Current PACE Law in Minnesota

In 2010, the Minnesota Legislature passed PACE-enabling legislation, which can be found in Minnesota Statutes §§216C.435 and 216C.436.<sup>6</sup> This legislation permitted both commercial and residential PACE programs to begin operating in Minnesota.<sup>7</sup> The PACE statutes were amended in 2013 to, among other things, define cost-effectiveness and allow for repayment of the PACE assessment over no more than 20 years.<sup>8</sup> In 2017, the Minnesota Legislature suspended the statutory authority to implement residential PACE programs, while continuing to allow commercial PACE programs.<sup>9</sup>

In Minnesota, the enabling statute permits cities, counties, towns, port authorities, housing and redevelopment authorities, and economic development authorities to establish PACE programs; and provides revenue bond authority for these programs. Qualifying projects can include energy efficiency, renewable energy, or electrical upgrades to enable electric vehicle charging.

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<sup>6</sup> 2010 MN Session Laws, Ch. 216, Sections 3, 4, 21, and 22

<https://www.revisor.mn.gov/laws/?id=216&year=2010&type=0>

<sup>7</sup> Minn. Stat. §§ 216C.435-216C.436 <https://www.revisor.mn.gov/statutes/?id=216C.435>

<sup>8</sup> 2013 MN Session Laws, Ch. 85, Article 8, Sections 1-6

<https://www.revisor.mn.gov/laws/?year=2013&type=0&doctype=Chapter&id=85>

<sup>9</sup> 2017 MN Session Laws, Ch. 94, Article 10, Section 27

<https://www.revisor.mn.gov/laws/?id=94&year=2017&type=0>

While residential PACE programs are suspended, the statutory requirements for PACE programs continue to apply to commercial PACE programs. There are currently two active commercial PACE programs in the state and no existing residential PACE programs.

The current statute allows for the repayment of qualified energy improvements through a voluntary property tax assessment, which is collected by an authorized implementing entity or local government. The financing for PACE projects is provided by municipal bonds or third party capital secured by the property assessment payments. Property owners repay the special assessments as part of their property tax bill. If the home is sold before the PACE assessment is repaid, the buyer may decide to assume responsibility for the PACE assessment, require that the seller reduce the asking price for the home, or require the seller pay off the PACE assessment in order to move forward with the sale.

Current law requires that a PACE program, whether residential or commercial, must meet the following program requirements:

- requirements and conditions on financing arrangements to ensure timely repayment;
- require an energy audit or renewable system feasibility study to be conducted on the qualifying real property and reviewed by the implementing entity prior to approval of financing;
- require the inspection of all installations and performance verification for at least 10% of the energy improvements financed by the program;
- not prohibit the financing of all cost-effective energy improvements (not prohibited otherwise in statute);
- require that all cost-effective energy improvements be made to a property prior to, or in conjunction with, an applicant's repayment of financing for improvements for that property;
- energy improvements must be made by a licensed contractor;
- require disclosures to borrowers regarding the risks involved in borrowing, including the risk of foreclosure if a tax delinquency results from a default;
- financing is only provided for those that can demonstrate the ability to repay;
- financing cannot be provided to a property owner that is not current on mortgage or property tax payments;
- collection of repayments is through a special assessment by petition to the implementing entity;
- payments and assessments cannot be accelerated due to a default, and a tax delinquency only exists for assessments not paid when due; and
- the liability for a special assessment on a property related to the financing runs with the property.

In addition to the program requirements, there are also requirements related to the financing terms including the following:

- the cost-weighted average maturity cannot exceed the useful life of the energy improvements installed and cannot exceed 20 years under any condition;
- the principal amount cannot exceed 20% of the assessed value of the property in which energy improvements are installed, including the cost of the installation of improvements, equipment,

materials, labor, an energy audit or renewable energy feasibility study, and project installation verification;

- an interest rate must be sufficient to pay for the financing costs of the program, including any issuance of bonds or financing delinquencies.

Chapter 94, Article 10, Section 27 of the 2017 Minnesota Session Laws, suspended the statutory authority to implement residential PACE programs in Minnesota and established the Residential Property Assessed Clean Energy Consumer Protection Task Force (Task Force). The legislation directed the Minnesota Department of Commerce to chair the Task Force and submit a report by January 15, 2018 to the House and Senate committees with jurisdiction over energy and consumer protection policy and finance detailing the Task Force's findings and any recommendations of the Task Force and containing any draft legislation necessary to implement the recommendations.

### **Commercial PACE in Minnesota**

While residential PACE programs are suspended, the statutory requirements for PACE programs continue to apply to commercial PACE programs. There are currently two active commercial PACE programs in the state and no existing residential PACE programs. The commercial PACE programs are administered by the St. Paul Port Authority (SPPA) through its MinnPACE program<sup>10</sup> and the Southwest Regional Development Commission (SRDC) on behalf of the Rural Minnesota Energy Board<sup>11</sup>. The commercial PACE programs serve a variety of commercial sectors including industrial, manufacturing, agriculture, nonprofit, places of worship and other commercial enterprises. SRDC's PACE program operates in 18 counties in the southwest part of the state and SPPA's MinnPACE operates in 39 counties and 21 cities throughout Minnesota. Both programs require an application process to determine the following:

- property and project eligibility
- total financing request
- that the owner is current on existing property taxes and on current mortgages
- evidence of a completed energy audit or renewable energy feasibility study
- procurement of cost estimates for projects from licensed contractors
- financial statements for underwriting and ability to repay determinations

The applications also include a petition for the special assessment on the property and declarations that address veracity of information provided by the applicant, codes and standards compliance, and property owner/program administrator liabilities. The types of projects that have been implemented under these two programs include solar photovoltaic arrays, LED interior and exterior lighting, high efficiency hot water heating, multi-zone refrigerant compressors, increased building insulation, variable speed ventilation, efficient heating and cooling equipment, and others. Most of these technologies are also eligible for utility rebates provided as a result of the Conservation Improvement Program (CIP). These rebates help buy-down the cost of the equipment which results in a lower amount of financing requested through PACE programs. To-date, MinnPACE has implemented over 100 projects totaling approximately \$40 million in capital improvements that have resulted in \$3.5 million in annual

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<sup>10</sup> <https://www.sppa.com/energy-financing/minnpace>

<sup>11</sup> <http://rmeb.org/pace.htm>



utility bill savings<sup>12</sup>. SRDC's program has implemented over 20 projects totaling approximately \$817,000 in capital improvements resulting in over \$120,000 in annual utility bill savings<sup>13</sup>. Currently, Minnesota's commercial PACE efforts are ranked third in the nation according to PACENation, an association of organizations that provides PACE program information, research, market data, and performance<sup>14</sup>.

## Federal Guidance on PACE from the Department of Energy

In November 2016, the United States Department of Energy (DOE) issued recommended "Best Practices Guidelines for Residential PACE Financing Programs."<sup>15</sup> These guidelines were an update from previous ones issued in 2010. The best practices focused on program design, compatibility of PACE with energy efficiency programs, and evaluation of program outcomes. The program design guidelines focused on the following areas:

- defining the scope of a PACE program and eligible improvements
- establishing eligibility criteria
- establishing consumer and lender protections
- public recording and assessments of PACE obligations
- incentives and direct assistance
- property appraisals and real estate transactions
- program execution and compliance with applicable laws
- quality assurance and anti-fraud measures

Each category is then broken down into several sub-categories. The Guidelines state that they have incorporated lessons learned from the experiences of state and local governments that have set up both commercial and residential PACE programs. For the purposes of the Task Force, particular attention was paid to those categories that influenced the Task Force duties, and they are discussed as noted in the Task Force deliberations and discussions below. The DOE Guidelines are recommendations and do not have the force and effect of law.

## PACE Law in other States

PACE generally has been authorized in 31 states.<sup>16</sup> Of those, 17 states allow commercial PACE programs only.<sup>17</sup> One state, Louisiana, has repealed statutory authority for both commercial and residential PACE, where no programs existed.<sup>18</sup>

Of the 14 states that permit residential PACE, only three states (California, Florida, and Missouri) have active residential PACE programs in place. California's residential program was launched in 2008, and now there are

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<sup>12</sup> Figures are from the July 27<sup>th</sup> Task Force presentation by SPPA's Pete Klein on MinnPACE.

<sup>13</sup> Figures received by Department of Commerce staff from SRDC program director Robin Weis.

<sup>14</sup> <http://pacenation.us/pace-market-data/>

<sup>15</sup> <https://energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf>

<sup>16</sup> <http://pacenation.us/pace-legislation/>

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

programs that serve multiple counties and cities throughout the state. In 2016 and 2017, California passed three bills into law that made significant changes to its residential PACE program. The 2016 changes required specific disclosures to be made to property owners. The 2017 changes include income-based underwriting requirements. The 2017 changes are discussed in detail in the deliberations section below.

Florida enacted PACE legislation in 2010 and has both commercial and residential PACE programs. Missouri also enacted PACE legislation in 2010 and has both commercial and residential PACE programs.

One state, Vermont, passed its first PACE law in 2009. PACE there has been operated by a state-established energy efficiency nonprofit, Efficiency Vermont. In 2011, Vermont passed legislation to downgrade PACE assessments to subordinate liens, which the State reported made their program unworkable. Now, instead of using residential PACE, Efficiency Vermont uses a different model to deliver energy efficiency and renewable energy improvements to residential homeowners.

# Task Force Deliberations and Discussions – Key Issues

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## PACE Liens

### Task Force Duty

To address concerns regarding the possible constraints on free alienation<sup>19</sup> of residential property caused by the existence of and amount of PACE liens.

### Issue Overview

This issue touches on two key concepts relevant to PACE financing. The first concerns the ability for PACE financing as a special assessment that is secured by a property tax lien against the property and collected through a property owner’s local taxes. Property tax liens have priority over liens placed on a property by a lender through a mortgage. One concern raised was whether this could result in a situation where a property owner is delinquent on their PACE assessment payment resulting in tax forfeiture or the foreclosure process even if they were current on their mortgage payment. Another concern raised was whether the amount of PACE financing could leave a property underwater with a negative amount of equity because of the PACE financing. Others raised the concern whether the presence of PACE financing could affect the ability to refinance or sell property.

### PACE Lien Overview Presentation

Mark Hastie, Director of Non-Depository Financial Institutions with the Commerce Department, gave the Task Force a presentation on PACE Liens.

The presentation focused on two issues related to liens:

- 1) The existence of PACE liens; and
- 2) The amount of any PACE lien

### **Relevant Current Law**

The definitions of “qualifying real property”, “implementing entity”, “local government” are as follows:

- Qualifying real property – a single-family or multifamily residential dwelling, or a commercial or industrial building, that the implementing entity has determined, after review of an energy audit or renewable energy system feasibility study, can be benefited by installation of cost-effective energy improvements
- Implementing entity - the local government or an authority designated by the local government by resolution to implement and administer programs described in Minn. Stat. § 216C.436

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<sup>19</sup> Free alienation in property law is essentially the ability or capacity to be able to sell or transfer a piece of property from one party to another.

- Local government - a city, county, or town

Program Requirements include:

- The owner must be current on mortgage or real property tax payments.
- Requires a petition by the owner to the implementing entity requesting collection of the payments as a special assessment under the section of law that outlines that process.
- Payments and assessments are not accelerated due to default. A tax delinquency only exists for assessments not paid when due.
- The liability for special assessments related to the PACE financing is attached to the property.

Financing Terms include:

- The cost weighted average maturity cannot exceed the useful life of the product, with a 20-year maximum.
- The principal amount cannot exceed the lesser of 20% of the assessed value of the property, OR the actual cost of installing the improvement, which includes all costs related to parts, labor, energy audit/renewable energy feasibility study, and the cost of verification.
- An interest rate sufficient to pay the financing costs of the program, including the issuance of bonds and any financing delinquencies.

Repayment:

- The implementing entity must secure payment with a tax lien against the property.
- The implementing entity must collect repayment as a special assessment, provided that special assessments may be made in up to 40 equal installments.

**Status of PACE Liens**

*Department of Energy (DOE) 2016 Guidelines*

Sections 3.5, 3.6, and 3.7 of the DOE Guidelines cover the following areas relevant to the existence of PACE liens:

- Explanation that PACE can result in a property tax lien where failure to pay could trigger forfeiture even if current on mortgage payments.
- Procedures for transferring the PACE assessment at purchase or refinance, and how the PACE lien position may affect options to sell or refinance.
- Disclosures if mortgage lenders may be unwilling or unable to modify or refinance a property with a PACE assessment due to the type and priority of the assessment.
- Call for non-acceleration upon property owner default.
- Existing mortgage servicers should be notified when property owners have placed a PACE obligation on the property. PACE assessments should be recorded in standardized public records.

### Federal Housing Administration Guidance

In the Federal Housing Administration (FHA) Mortgagee Letter 2017-18 issued on December 7, 2017, FHA announced that they would no longer insure new mortgages on properties with PACE assessments.

Veterans Affairs' (VA) Circular 26-26-18 (2016) provided guidance stating that if that if the lender requires a borrower to escrow funds to pay the PACE obligations, then the lender must open and manage the escrow account in a manner consistent with federal, state, and local law.

### Fannie Mae Form 3024 (standard mortgage form in Minnesota from Fannie Mae)

Fannie Mae's Form 3024 discloses that failure to pay taxes or assessments, which could attain priority over the mortgage, could allow the lender to require full and immediate payment of the assessment. A borrower must promptly discharge any lien with priority over the mortgage unless the borrower agrees in writing to payment of the obligation in a manner acceptable to the lender. The borrower must pay to the lender any payments (escrow funds) for any taxes and assessments, which can attain priority over the mortgage as a lien on the property.

### Federal Housing Finance Agency

The Task Force discussed the Federal Housing Finance Agency's (FHFA) policy position related to PACE lien position. FHFA holds approximately 80% of market share between FHA, VA and FHFA. FHFA prohibited Fannie Mae and Freddie Mac from purchasing or refinancing PACE-encumbered mortgages. A Task Force member indicated that stakeholders, including the PACE industry, consumer groups and the banking and real estate industries have been working with FHFA to find an appropriate, nationwide solution to resolve its decision to not support first-lien PACE programs. To date, FHFA's position has not changed. The same member commented that the FHFA ignores special assessment law. They state that there is no evidence of an increased risk to the mortgage holder. PACE assessed homes have a lower default rate than traditional mortgage products. Homeowners can voluntarily assess their property for other issues, in which FHFA does not have a problem.

### **Amount of PACE Liens**

#### Loan to Value and Equity

Current law restricts the amount of a PACE obligation to 20% of assessed value, and does not require a minimum amount of equity in a property before adding a PACE obligation. It is possible for the amount of the PACE obligation, combined with any mortgages or other liens, to result in the overall amount of encumbered debt on the property exceeding 100% of its value.

#### California PACE Law

California limits the amount of mortgage-related and PACE financing from exceeding the value of the property. The total amount of annual property taxes and assessments cannot exceed 5% of the property's market value at the time the PACE financing is approved.

### DOE 2016 Guidelines – Section 3.3

DOE recommends a minimum equity threshold of 10% to qualify for PACE financing and a maximum amount of assessment compared to the property value. PACE assessment and current debt cannot exceed the market value of the property at the time the PACE financing is approved.

### **Panel Discussion on Liens**

During the September 24 meeting, industry representatives provided the Task Force with information about PACE liens. The representatives were: Kristine Kujala, Ramsey County Assessor's Office; Sue Basiago, Minnesota Land Title Association; Chris Anderson, Bank Cherokee; Bill Schwietz, Minnesota Mortgage Association

#### **Kristine Kujala, Ramsey County**

Ms. Kujala gave the Task Force an overview of the property forfeiture process for property taxes.

Property taxes become delinquent one year after they are due, and homeowners generally have three years to pay them before the property forfeits to the State, although some communities accelerate the payback period. There are two ways a lender could settle delinquencies on a property with a lien: 1) the lender could pay the remainder, foreclose with the borrower and then take title of the property; or 2) the lender could settle the debt, add the delinquent amount on to the mortgage and then repackage with the borrower.

In the case of a forfeiture, the State will take the title to hold in trust for all taxing jurisdictions. The PACE lien will take priority over all additional liens except federal or state. If there is a mortgage, it is wiped out at the point the property is forfeited. There is a remedy after forfeiture: a prior owner, an interested party or the mortgage holder can redeem the property by filing an application to repurchase, but this is not an automatic right. The application has to have approval by the county board after a series of reviews. Delinquency redemption is an automatic right, but once it forfeits to the state, it requires a county review & recommendation.

The County does not divide the payment as it all pays down the singular balance of all property taxes. Property owners are not allowed to make partial payments for any portion of their property tax bill, or withhold payment for any particular line item. In other words, a homeowner who does not pay the amount of their PACE assessment, or any other special assessment, will be delinquent on their property taxes, not just on the assessment.

In response to a question of how often does a lender pay the tax assessment off in a forfeiture situation so that they move into the first position, Ramsey County stated that there has been a shift since the height of the foreclosures and it depends on whether the original lender still exists and how loans were previously packaged and sold off to other lenders. In regards to who most often files an application to redeem, it is split between approximately half of those being prior owners and half the lender. There is a specific timeframe to redeem, in which you have one year from the date of forfeiture for vacant land (recent legislation reduced to 6 months as of Jan. 1, 2018) and until the property is sold to a third-party buyer for property that is homesteaded.

If the property is in default, the county notifies all interested parties who are of record or have asked to be notified and paid the filing fee on a yearly basis. It is up to the lender to determine if they want to work out an

agreement with the borrower to cure a default for the special assessment in order to help the borrower get back to good standing. If the lender has a \$300,000 mortgage and the PACE lien is \$10,000, the lender will likely do something to maintain their position.

There is a three-year redemption period in which the mortgager can foreclose for failure to pay the property tax or mortgage. After the three-year period, there is a public auction. Most likely, the mortgager will not lose the home; but rather, they will make the payments to bring the tax current.

The only portion of a PACE assessment that becomes due in a default situation is the amount that is an arrears. The remainder of the assessment stays with the property.

### **Sue Basiago, Minnesota Land Title Association**

The Minnesota Land Title Association (MLTA) represents the industry that will be ensuring to the lender whether they are going to have clear title or not.

Ms. Basiago provided the Task Force information about MLTA's main concern, which is the timing of the transaction. They question: if a loan is provided by a private industry that is then going to be purchased through bonds, when does the transaction happen? Minnesota is a record notice state where everything has to be of record. If there are mortgages or liens of record prior to one's interest, they are in first lien position. If there is a loan out, when is it a loan versus an assessment? The loan must be satisfied before it goes to a bond. If someone does work on the property, from a title perspective, they need to make sure the work is completed and lien waivers are given. The contractor has the lien rights before anyone else. According to MLTA, one problem that needs to be resolved is identifying who holds the lien rights.

Title companies pull assessment searches. When they get tax statements, they will see the assessment and then contact the local government to find the principal balance and the amount left, including interest. Title companies will find out if the assessment is payable and, if so, they want to make sure the real estate contract states whether the seller or the buyer is going to pay. Either the amount is written in to the contract with the buyer, the seller will pay-off the amount prior to transfer of title, or they split the cost. If the PACE lien is not payable, will the lender let the transaction proceed and close?

Commercial PACE does not raise the same concern since commercial borrowers are more educated on the issues. With residential assessments, most often the assessment is not realized until the buyer is at the closing table and they are now wondering what they are going to do.

With any type of typical loan, there is going to be an escrow. MLTA's concern is that in a refinance there is still a balance owed under assessment. People will sit down at the closing table with one tax amount, decide to take out a PACE lien a few months later, and their escrow will not catch up for at least a year or more resulting in an escrow balance. This is where the delinquencies will happen. Right now, the economy is doing well and they are not seeing many delinquencies, but MLTA is worried about when the economy is not doing well.

### **Chris Anderson, Bank Cherokee**

Mr. Anderson gave the perspective from a local, small community bank. FHA has allowed PACE liens to take priority over its loans, but Fannie & Freddie have not<sup>20</sup>. From a bank perspective, this is a concern. Fannie & Freddie specifically say that any prior priority lien in front of their mortgage would be an event to default. General proceedings have been that banks are not exercising their right of calling the loan because of this, but nonetheless it could create that event. FHA loans are typically riskier for borrowers, so allowing additional financing in front of what may be small equity is worrisome for banks, as they rely on the cushion to make them whole in event of default. This makes bank loss more likely.

There are differing opinions as to whether the improvements add tangible value to the property. Solar panels may limit a buyer's pool coming out of foreclosure. Residential appraisers typically do not make adjustments for items such as windows, leaving the question of how to substantiate value.

Until Federal Housing Finance Agency (FHFA) changes, it really limits what the bank can do with the property if they own it. If a notification requirement exists, and it is a FHFA backed loan, a bank would do a small amount of underwriting to determine loan to value after notification. There is a possibility that the loan would need to be downgraded, ultimately leading to a monetary impact on the bank.

If a bank client has a Fannie/Freddie product and there is no requirement for notification of lender, FHFA guidelines will not allow their lien to be subordinated. How will a contractor at the kitchen table with a homeowner determine who has the loan on the house? General practice from FHFA has been to not call the loan. Special assessments and many other liens generally violate FHFA rule.

### **Bill Schwietz, Minnesota Mortgage Association**

Mr. Schwietz presented the position of the Minnesota Mortgage Association that protection of first lien position is not just a PACE financing issue. The erosion of first lien position is of greater concern to consumers, investors and taxpayers than it is to mortgage lenders. The first lien position keeps mortgage rates low, retirement accounts safe, and taxpayers whole. Mortgages are bundled together with others and sold to Fannie or Freddie. Fannie/Freddie takes those mortgages and backs a security, then sells the mortgage-backed security to investment funds. A consumer's mortgage payment could be helping to fund your retirement account. Ability to recoup losses in a foreclosure matters to everyone in this chain. If Fannie/Freddie do not have first lien rights, there is greater risk of loss to those entities that are currently under conservatorship of the federal government. Therefore, taxpayers are financially responsible for Fannie/Freddie. PACE programs are charging borrowers second mortgage rates or higher, but are taking advantage of decreased cost of funding because the benefit of first lien priority. In other words, PACE programs are taking advantage of the special tax assessment status in order to improve interest

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<sup>20</sup> FHA position is stated as it was at the time of Mr. Anderson's presentation. Since the presentation, FHA has stated they will no longer insure new mortgages on properties with PACE assessments.



rate spread. We need to understand economics and purpose of first lien priority. Increased risk could affect the availability of credit or the ability to get a loan.

## **Task Force Discussion**

The Task Force discussion focused on the following issues/questions.

### **Lender Notification**

Neither California nor Minnesota law requires lender notification prior to a PACE lien being placed on the property. The challenge is time lag. The Task Force discussed the options of notification versus consent versus acknowledgment. Some members of the Task Force were concerned that if you are dealing with a replacement situation, there is no timeliness requirement or motivation for a lender to respond.

### **Contractual Subordination**

Discussion of the Task Force turned to the issue of contractual subordination. In California, the HOPE program allows borrowers to request subordination. Renovate America responded that they did contractual subordination for a period, but it did not resolve FHFA's concerns so they ceased this practice. They did not see contractual subordination as fixing any of the real marketplace issues.

### **Work Completion Verification**

Renovate America makes sure the work is done by requiring the homeowner to sign a form indicating completion of the project prior to the contractor receiving payment from Renovate America. There are waivers in place.

### **Sale of Property with Assessment**

Renovate America has worked with Realtor® associations on requiring disclosures up front as to a PACE assessment. They call all involved parties when a property with a PACE assessment goes on the market to ensure the lien is understood. PACE assessments are always payable. In two-thirds of refinance situations, the PACE assessment travels to the new loan. In two-thirds of buyer/seller transactions to date, the assessment is paid off prior to the sale.

### **Lien Position and Credit Unions**

There is a lot of reservation on behalf of Credit Unions in relation to the first position of a PACE lien. They work with many Fannie and Freddie loans. The lien issue is going to affect their underwriting standards and writing their loan portfolios. Things will become more expensive if they have to build in more loan loss protections. Renovate America responded there has been no documented material risk to mortgage holders due to a PACE assessment. The single purpose nature of this financing means that more value is being retained; therefore, there is less risk. In addition, data<sup>21</sup> reflects that homeowners are seeing a return on the investment in higher

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<sup>21</sup> Goodman, Laurie S. and Zhu, Jun. "PACE Loans: Does Sale Value Reflect Improvements?" *The Journal of Structured Finance* Winter (2016): Volume 21, Number 4. <http://jsf.ijournals.com/content/21/4/6>

efficiency products through increased sale value and fewer days on the market in relation to comparable properties. Other members of the Task Force noted that this situation has not been tested yet in a market downturn.

### **Assessment versus Loan Classification**

The Task Force discussion turned to focus on how to classify a PACE transaction, whether the term loan or assessment is more applicable. Some members of the Task Force indicate that PACE is a special assessment and not a mortgage or the same as other lending products. There was also discussion about the difference between a voluntary and an involuntary special assessment, whereby the latter is asking for the assessment and waiving the right to a hearing. You can take aspects of Truth in Lending Act (TILA) and put over PACE, but you cannot put PACE under TILA.

Other members expressed the view that even though this financing is legally defined as a tax assessment, all the characteristics of the financing define it as a loan. They stated that it is an extension of credit (financing), repaid over a fixed period of time in installments, carries an interest rate, and has fees associated with the agreement. They further noted that because it is legally defined as a tax assessment and not a loan, PACE financing is not subject to any other requirements or protections to which other similar lending/financing is subject.

Still other members of the Task Force expressed the view that PACE assessments are characteristic of consumer financing, and appropriate consumer protections should be included. However, PACE, which means property assessed clean energy, utilizes the same assessment process and procedures as all other Minnesota voluntary special assessments, which are defined in statute and through case law.

## **Point-of-Sale Confusion**

### **Task Force Duty**

To reduce and minimize any point-of-sale confusion in transactions involving PACE-encumbered homes.

### **Issue Overview**

For the purposes of this report, the phrase “point-of-sale” refers to the time period including and between when the homeowner is informed about the option of PACE financing and when the consumer signs a contract to commit to the use of PACE financing.

### **Presentation: Point-of-Sale Confusion**

Matt Boyer, Audit Director with the Commerce Department, gave the Task Force a presentation covering the two primary disclosure documents required in residential mortgage transactions: the Loan Estimate<sup>22</sup> and the Closing Disclosure. While PACE financing is not identical to a mortgage, many elements of the two financing options are the same. Due to the similarities between residential mortgages and PACE financing, these disclosures contained

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<sup>22</sup> Sample Loan Estimate

much of the same information the Task Force indicated as important to disclose to consumers interested in a PACE product. All major PACE administrators utilize a disclosure modeled after the Loan Estimate, which is also shared by PACENation<sup>23</sup>. The items the Task Force felt were important are noted below.

### **Disclosure of Terms**

The Task Force discussed using the same or similar documents to the Loan Estimate used in residential mortgage financing. Renovate America uses documents containing many similarities to the Loan Estimate. Terms the Task Force generally want consumers to understand include, but are not limited to:

- The monthly and/or annual payment the homeowner will need to make due to the PACE financing;
- How long the homeowner would need to make the PACE associated payments;
- The total assessed amount;
- The interest rate the homeowner will be charged on the PACE financing;
- The total fees associated with the PACE financing;
- The length of time a specific energy improvement will take to repay its purchase and installation costs; and
- The entire amount paid by the consumer once the PACE assessment is paid off.

### **Loss of Property**

The Task Force wants clear disclosure to consumers that a failure to make payments associated with the PACE financing can result in forfeiture and loss of the property.

### **Right of Rescission**

Accordingly, the Task Force members discussed including a rescission period to allow a given length of time to review the documents and information to either verify the decision or withdraw from the transaction.

### **When and Where to Make Payments**

Some Task Force members want the consumers to clearly know if the payments would be incorporated into their monthly mortgage payment or if they would have to make payments each six months when taxes are due.

### **Selling a PACE Encumbered Property**

Some Task Force members want a disclosure to consumers explaining the homeowner may have to pay off the balance of the PACE financing or reduce the asking price when selling their property in order to entice buyers to purchase the property.

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<sup>23</sup> PACENation Consumer Protection Policies' Model Financing Estimate: <http://pacenation.us/wp-content/uploads/2017/02/PACENation-Consumer-Protection-Policies-v2.0-02.17.17-with-attachments.pdf>

## **Guaranteed Savings**

Some Task Force members expressed a desire for the consumers to know that savings from a clean energy improvement are not guaranteed.

## **Providing Copies of Documents**

Certain members of the Task Force expressed interest in the consumers being provided hard copies of all associated paperwork immediately after the signing of a PACE contract.

## **Counseling Option**

The Task Force discussed that the homeowner could be given a list of non-profit counselors to discuss financing options. Certain counties offer free or subsidized financing for persons with low incomes or in emergencies. Some members want the homeowner to be informed of an opportunity to consult with an outside financial counseling agency, which is done in residential mortgage financing options.

## **Disclosures: costs, fees, and risks**

### **Task Force Duty**

To ensure conspicuous and meaningful disclosure of, among other things: (1) all costs and fees of a residential PACE loan, and (2) the risks, such as foreclosure and higher costs, that may be associated with residential PACE loans relative to other financing mechanisms.

### **Issue Overview**

Many elements of meaningful disclosure overlap with the section above titled “Point-of-Sale Confusion”.

### **Presentation and Discussion**

As discussed in the “Point-of-Sale Confusion” section above, Matt Boyer of the Commerce Department gave the Task Force a presentation covering disclosure documents. Additional items of discussion are outlined below.

#### **Timeliness**

Part of meaningful disclosure is timeliness. With specific regard to items (1) and (2), noted in the section above titled “Task Force Duty”, timeliness can mean receiving disclosures a certain amount of time prior to signing a PACE contract sufficient to review disclosures and conduct any necessary research to understand the product.

#### **Readability**

Another part of meaningful and conspicuous disclosure is that they are easy to read and understand. The Task Force expressed interest in any disclosures being written in plain language, a proper layout, and no more voluminous than necessary. Part of being easy to read includes using the proper font sizes and color. Disclosures in some advertisements tend to be in small, light colored font hidden on a back page.

## **Complete**

The disclosures need to cover all necessary elements for the consumer to make an informed decision. Some Task Force members expressed that this includes stating that other financing options may be more favorable.

## **Ability to Repay**

### **Task Force Duty**

To ensure that the ability to repay standard uses commonly accepted underwriting standards.

### **Issue Overview**

This issue touches on one of the fundamental steps that happens when a consumer attempts to secure any type of financing, whether unsecured or secured. Most creditors go through some type underwriting process based on the borrower's current and expected or anticipated income, monthly debts, and monthly living expenses. This is done in order to assess the likelihood that the borrower is going to be able to make the payments. Current law merely states that a financing program must provide financing only "to those who demonstrate an ability to repay."<sup>24</sup>

### **Ability to Repay Overview Presentation**

Mark Hastie, Director of Non-Depository Financial Institutions with the Commerce Department, gave the Task Force a presentation on Ability to Repay.

### **DOE 2016 Guidelines**

The DOE Guidelines contain two sections, 2.2 and 2.3, that touch on aspects of ability to repay:

- Section 2.2: confirming property-based debt, tax assessments, and property valuation
  - Confirming the amount of the property owner's public and private debt secured by the property
  - Confirming that the total property tax charges with the new PACE assessment are below any maximum property tax level authorized by the jurisdiction
  - Property owner is not late on property taxes or mortgage payments
  - Do not place a PACE obligation on a property in or recently in distress or at risk for distress
- Section 2.3: review property owner's income and debt obligations

### **Truth-in-Lending Act (TILA)**

The Dodd-Frank Act made changes to TILA that require creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling. Regulation Z implements TILA and lays out eight underwriting factors as part of the minimum requirements for making the determination.

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<sup>24</sup> Minn. Stat. § 216C.436, subd. 2(8)

The eight include: (1) current or reasonably expected income or assets; (2) current employment status; (3) the monthly payment on the covered transaction; (4) the monthly payment on any simultaneous loan; (5) the monthly payment for mortgage-related obligations; (6) current debt obligations, alimony, and child support; (7) the monthly debt-to-income ratio or residual income; and (8) credit history.

In addition, TILA has the Qualified Mortgage Standard, which presumes compliance with ability to repay if the creditor can verify income/assets, the debt-to-income ratio is less than 43%, and points and fees are less than 3% of the loan amount.

### **Minnesota Law – Mortgages**

The Minnesota Residential Originator and Servicer Licensing Act states within its standards of conduct at Minn. Stat. § 58.13, subd. 1(24), that a mortgage originator must verify the ability to repay using reliable documents such as tax returns, payroll receipts, or bank records. The law also allows originators to use criteria similar to those found in TILA, as well as things such as credit scores, pension statements, or cash flow.

### **California Bill AB1284**

California just enacted changes in October of 2017 to its PACE law that included a section on ability to repay that included the following factors:

- Owner must submit their monthly income and housing expenses (total including all mortgage payments, taxes/assessments, insurance or preexisting fees)
- Debt obligations, including: all secured/unsecured debt, alimony, child support, and monthly housing expenses
- Income/assets must be verified using third-party records, and gives examples of records such as: pay stubs, tax returns, W-2, bank/investment account statements, records from employer, records from government agency or income from benefits or entitlements
- PACE administrator must then determine that the owner's income is sufficient to meet PACE plus other debts, with sufficient residual income to meet basic household living expenses (law gives examples of this to make a "reasonable estimation")
- Some requirements may be waived for emergency/immediate necessity

## **Consumer provisions from TILA and RESPA**

### **Task Force Duty**

To ensure that consumer provisions that apply to conventional loans and other financing options, including but not limited to the TILA and the Real Estate Settlement Procedures Act (RESPA), are required of and apply to PACE financing.

### **Issues and Discussion:**

Some of the Task Force discussion surrounding this issue includes, but is not limited to:

- A right of rescission period
- A confirmation of the borrower’s ability to repay the financing (as discussed in the “Ability to Repay” section above)
- Ensuring the advertisements for the PACE product are not misleading
- Dual Tracking: In residential mortgage transactions, a lender may not commence with a foreclosure proceeding while also actively negotiating a repayment plan for homeowners in default
- Ensuring the homeowner receives a legitimate benefit from the transaction. This is known in residential mortgage transactions as a tangible net benefit
- Ensuring there are no undisclosed kickbacks that increase the cost to homeowners

It is unclear to the Task Force if the Federal Trade Commission’s Holder Rule<sup>25</sup> would or could apply. If it is applied, it could work as a strong consumer protection. There could be argument that it does not apply because of the PACE product being classified as an assessment rather than a loan.

The legislature could hold that the parties involved with PACE do need to comply with the requirements of RESPA and TILA. At this time, a PACE product is not considered a federally regulated loan. Accordingly, it would not need to comply with RESPA unless specific legislation were passed.

## **Protections for elderly, low-income, and financially vulnerable homeowners**

### **Task Force Duty**

Address any unique protections necessary for elderly, low-income homeowners and other financially vulnerable homeowners.

### **Issue Overview**

Over multiple meetings, the Task Force discussed consumer protections for Residential PACE, many of which have been addressed during earlier sections of the report. As it relates to specific protections for the elderly, low-income and financially vulnerable homeowners, consumer protections were evaluated over multiple meetings by discussing potential protections, existing protections, examples of protections in other energy-related programs, and through identification of risks during implementation of a hypothetical Residential PACE project.

### **National Consumer Law Center (NCLC) Presentation Overview**

John Rao with the National Consumer Law Center (NCLC) provided an overview to the Task Force of consumer protection concerns as seen by NCLC. NCLC is a consumer advocacy organization that has provided significant analysis of the risks associated with Residential PACE and has participated at the national and local levels to educate decision-makers of these risks. The presentation provided to Minnesota’s Task Force focused on a few

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<sup>25</sup> The Federal Trade Commission established a rule that sellers must include a clause in credit contracts that makes any assignee or holder of the credit contract responsible for claims the consumer may have against the seller.

key areas of concern. The NCLC believes there should be nationally uniform requirements for all Residential PACE financing and programs. Through the presentation and Task Force discussions, the following points were addressed.

### **Underwriting**

Mr. Rao asserted that the Task Force should ensure a strong underwriting process. NCLC believes that making home-secured loans without underwriting is the wrong way to go. Mr. Rao noted that most PACE consumers are happy with their projects, but NCLC only sees the problem cases.

### **Right to Cancel**

NCLC also believes there should be a right to cancel. Minnesota already has examples of right to cancel with other types of home solicitations. The right to cancel should apply to both the contract with the contractor as well as the assessment. This should consist of a three-day rescission period. An ability to waive this period could be looked at in the case of an emergency replacement, similar to what is allowed under TILA, but there must be ways to avoid abuse of this. Residential PACE should be considered a credit program under TILA and the Holder Rule should apply.

### **Contractor Requirements**

NCLC likes having the availability of a recovery fund. Minnesota's fund provides a good way to address this. There should also be strict requirements on what contractors can address. In California, they are seeing problems with contractors selling PACE as a government program and overstating that the improvements seen will pay for themselves within very specific timeframes.

### **Assessment Requirements**

Contracts should have a provision disallowing prepayment penalties. They should also not include mandatory arbitration clauses. This could be modeled after TILA.

### **Ability to Repay**

NCLC would like to ensure other weatherization and energy efficiency opportunities are available to these classes. Homeowners should be informed of these programs prior to an assessment. Most states do not permit monthly payments of property taxes. This leaves a larger amount due each time and may be harder for people to budget for. There could be a process installed for monthly payments, although tax collectors may not be set up to deal with this. NCLC thought that this could possibly be offered by PACE providers. A better approach to help the low-income would be to ensure a strong ability to repay. Low-income consumers can benefit from the program and certain classes of people should not be excluded. Income for the ability to repay calculation should not be based on stated income, though as there are problems with misstating income levels. There should be a verification process.

### **Disclosures**

The Task Force should consider required disclosures. The terms of the contract should be given in an advance disclosure three days prior to signature. The homeowner should receive the disclosures before and work should



not be performed until they have been given time to review and the right to cancel. In addition to credit terms, disclosures should describe PACE-specific aspects, such as the lien. There have been cases in California where the homeowners (particularly seniors) are being told PACE is a government program and are not being informed that there will be a lien placed on their home. There should be a requirement that homeowners are told that if they fall behind on their assessment payment, they will pay interest on the PACE contract but also penalty and interest on their property taxes.

### **Local Units of Government**

The local unit of government plays an important role. PACE benefits by the local government setting standards for items such as minimum contractor requirements, quality assurance, and homeowner complaints. Interest rates in California are higher than what NCLC would have thought.

### **Additional concerns**

In California, they are seeing concerns arise regarding seniors who may not have internet accounts and may not be comfortable with the internet so do not understand the tablet model used to sign contracts. In addition, many consumers do not have ready access to the internet, therefore paper copies of contracts should be provided. NCLC does not believe the changes in California have solved all of the Residential PACE-related problems. For instance, even though some companies have instituted confirmation calls with the consumers, consumers have still been getting through the process that do not have the ability to repay (since there is no requirement to screen for that). The CFPB has a good guide; NCLC would like to see a nationwide ability to repay standard with the allowance for a more streamlined process for emergency repair small loans.

### **Availability of additional programs**

NCLC would like to see a requirement that if a consumer qualifies for other types of financial assistance, such as weatherization assistance, they should be referred to those programs.

## **Minnesota Energy Programs Presentation Overview**

Jessica Burdette, State Energy Office Manager with the Commerce Department, gave the Task Force a high-level overview of low-income energy programs in Minnesota that currently include varying levels of protections for low-income customers. These programs enable residential consumers to implement energy efficiency and renewable energy projects that help them better manage their utility bills, improve comfort and safety of their homes, and reduce their overall carbon footprint. Examples of these programs include the Conservation Improvement Program, the Weatherization Assistance Program and financial programs administered through entities such as the Minnesota Housing Finance Agency and the Center for Energy and Environment. There are a variety of consumer protections built into these existing programs that include, but are not limited to, strong regulatory oversight by a state or federal agency, established rules and statutes, project verification practices, and cost-effectiveness requirements. The consumer protections that are built into these programs could potentially be adapted, specifically with regard to regulatory oversight, for future Residential PACE programs in Minnesota.

## **Conservation Improvement Program**

The Commerce Department has regulatory oversight of the Conservation Improvement Program (CIP), a ratepayer funded program designed to meet the 1.5% energy efficiency resource standard<sup>26</sup>. Utilities administer CIP programs that typically provide a rebate to the customer for making investments in weatherization, high efficiency mechanical equipment and appliances, maintenance of heating equipment, and low cost equipment. Some utilities also offer energy audit programs. Through the energy audit programs, utilities conduct diagnostics on the customer's home and provide recommendations for appropriate energy efficiency investments and referrals to CIP programs that provide incentives for those investments.

CIP also establishes a minimum amount that utilities must spend delivering low-income programs: energy conservation improvement programs that directly serve the needs of low-income persons, including low-income renters. Spending requirements are determined based on the three-year average of each utility's residential gross operating revenue and are different for different types of utilities. Utilities typically collaborate with Weatherization Assistance Program (WAP) service providers or other vendors to weatherize dwellings and repair inoperable mechanical equipment (i.e. furnaces, boilers, water heaters). Customers that participate in programs that partner with WAP service providers benefit from the ability to leverage WAP and CIP funding sources in a single home as the program's well-established eligibility determination, site assessment, and quality control procedures are overseen by the MN Department of Commerce and the US Department of Energy. Consumers are made aware of these programs through a variety of means including, but not limited to, utility bill inserts, email promotion, trade organizations, direct contact with consumers, call center information, community programs, contractors, and others. There is no requirement that consumers participate in these programs, but rather an incentive for the utilities to work with their customers, including low-income, to meet state mandates, prevent customers going into arrears, alleviating consumer energy burdens, and providing good customer service.

## **Weatherization Assistance Program**

The Minnesota Weatherization Assistance Program (WAP), which receives the majority of its funding through the United States Department of Energy and the Department of Health and Human Services, enables income-qualified households to permanently reduce their energy bills by helping to make their homes more energy efficient while protecting the health and safety of family members. The program is administered via 24 local service providers across the state under the direction of the Minnesota Commerce Department. Assistance is available to homeowners and renters who are at or below 200 percent of the Federal Poverty Income Guidelines and households apply for WAP assistance through a joint Energy Assistance/Weatherization application. Priority is given to households with:

- elderly or disabled family members;
- children 18 years of age or younger;
- high energy consumption; and

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<sup>26</sup> Minnesota Statute § 216B.241 <https://www.revisor.mn.gov/statutes/?id=216B.241>

- family members receiving TANF (Temporary Assistance for Needy Families) or SSI (Supplemental Security Income) within the last 12 months

Services, free to the household, may include the following:

- energy audits to evaluate potential weatherization work;
- exterior wall and attic insulation;
- air infiltration and bypass sealing;
- testing, repair, or replacement of homeowner mechanical systems; and
- participant education

Income qualifying consumers are made aware of these programs through referrals from the Low Income Home Energy Assistance Program (LIHEAP)<sup>27</sup>, electric and natural gas utilities, Community Action Agencies, Commerce’s Energy Information Center, community/neighborhood programs, from other low-income assistance programs, and others. Due to data privacy constraints and protections for low-income customers, targeted outreach to low-income customers can be somewhat limited<sup>28</sup>. There is no requirement for customers to participate in the program; it is voluntary.

WAP has provided weatherization services to over 30,000 low-income Minnesota households over the last 7 years and has reduced individual household’s energy bills by 30% to 45%. In the last fiscal year for WAP, each household received an average benefit of approximately \$7,200. For the 2017 program year, over \$7.8 million will be invested in program administration and weatherization services for income qualifying customers.

### **Center for Energy and Environment – Residential Home Energy Loan Program**

The Center for Energy and Environment (CEE) Home Energy Loan Program (HELP) is a \$1.6 million Revolving Loan Fund (RLF), which is funded from the judgment entered against Exxon Corporation for petroleum pricing violations in the early 1980s. The Commerce Department is the administrator of these funds for use by third parties and monitors program delivery as required by the Minnesota Legislature. For CEE’s purpose, the funds are used to underwrite single-family and rental property loans, service loan payments, and market to property owners about low-cost home energy loans in Minnesota. Although unsecured loans may be given under this program, the loans are usually secured by a property lien. Loans under this program may be made for up to ten years with up to a 4.99% interest rate (unsecured loans may be taken at a higher percentage). CEE uses a variety of marketing activities to promote this program including, but not limited to, utility CIP programs, contractor

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<sup>27</sup> LIHEAP is a program that helps income-qualifying customers afford their energy bills, provide assistance during an emergency crisis, and weatherize or make minor energy-related home repairs. The Department of Health and Human Services provides funding for LIHEAP. See US Code 42 U.S.C. § 8621-8630 for additional detail. Link to Application: <https://mn.gov/commerce-stat/pdfs/application-english.pdf>

<sup>28</sup> See the federal Privacy Act 1974, 5 U.S.C. § 552a(e)(3) and the Minnesota Government Data Practices Act, Minn Statute § 13.04, subd. 2.

referrals, community partners, trade allies, and other traditional marketing activities. There is no requirement for customers to participate in the program; it is voluntary.

The loan funds are used for equipment/materials replacement including insulation, heating/cooling systems, and window replacements. Including CEE funds used under the HELP program, over \$12 million in loans have been originated. The average loan has increased from about nine thousand (\$9,000) in 2014 to about ten thousand seven hundred dollars (\$10,700) in 2017.

## **Minnesota Housing Finance Agency Loan Programs Presentation**

Katie Topinka, Director of Government Affairs with Minnesota Housing Finance Agency (MHFA), gave the Task Force an overview of MHFA's homeowner assistance programs that can be used for energy efficiency projects.

The Fix-Up program is a home improvement program that offers loans through private or non-profit lenders and uses an industry standard underwriting process for general home improvements and energy efficiency related improvements. If the improvement is energy efficiency specific, income limits can be waived for unsecured financing due MHFA's partnership with the Commerce Department and use of a loan loss reserve (LLR). The LLR is supported by funds allocated to the Commerce Department from the American Recovery and Reinvestment Act of 2009 (ARRA). The agreement between MHFA and Commerce provides that loans for home energy upgrades will be made for periods between three and ten years at up to 4.99% interest. MHFA has until the year 2030 (or when the LLR funds are exhausted) to request payments for loan defaults, and Commerce limits the amount paid to \$105,000 per quarter. Commerce has dedicated \$1 million dollars of this funding in order to leverage \$10 million in unsecured loans. Among other equipment approved for energy reduction financing under the Fix-Up agreement, a significant percentage of loan funds are used for equipment/materials replacement including insulation, heating/cooling systems, and programmable thermostats. In almost four years, the program has originated over 452 loans. The average loan is about \$9,000.

MHFA also has a Rehabilitation Loan Program, which is a deferred loan with a 15-year term and an option to be forgiven. To qualify, customers must be under 30% of the area median income level. Many seniors take advantage of this program. CAP agencies often administer this program since it can be paired with WAP. \$27,000 is the maximum amount that can be received through the program.

There is also an Emergency Loan Program with the same requirements as the Rehabilitation Loan program; however, it can only be used for emergencies. Typically, the Emergency Loan funds run out every year.

## **Task Force Group Discussions**

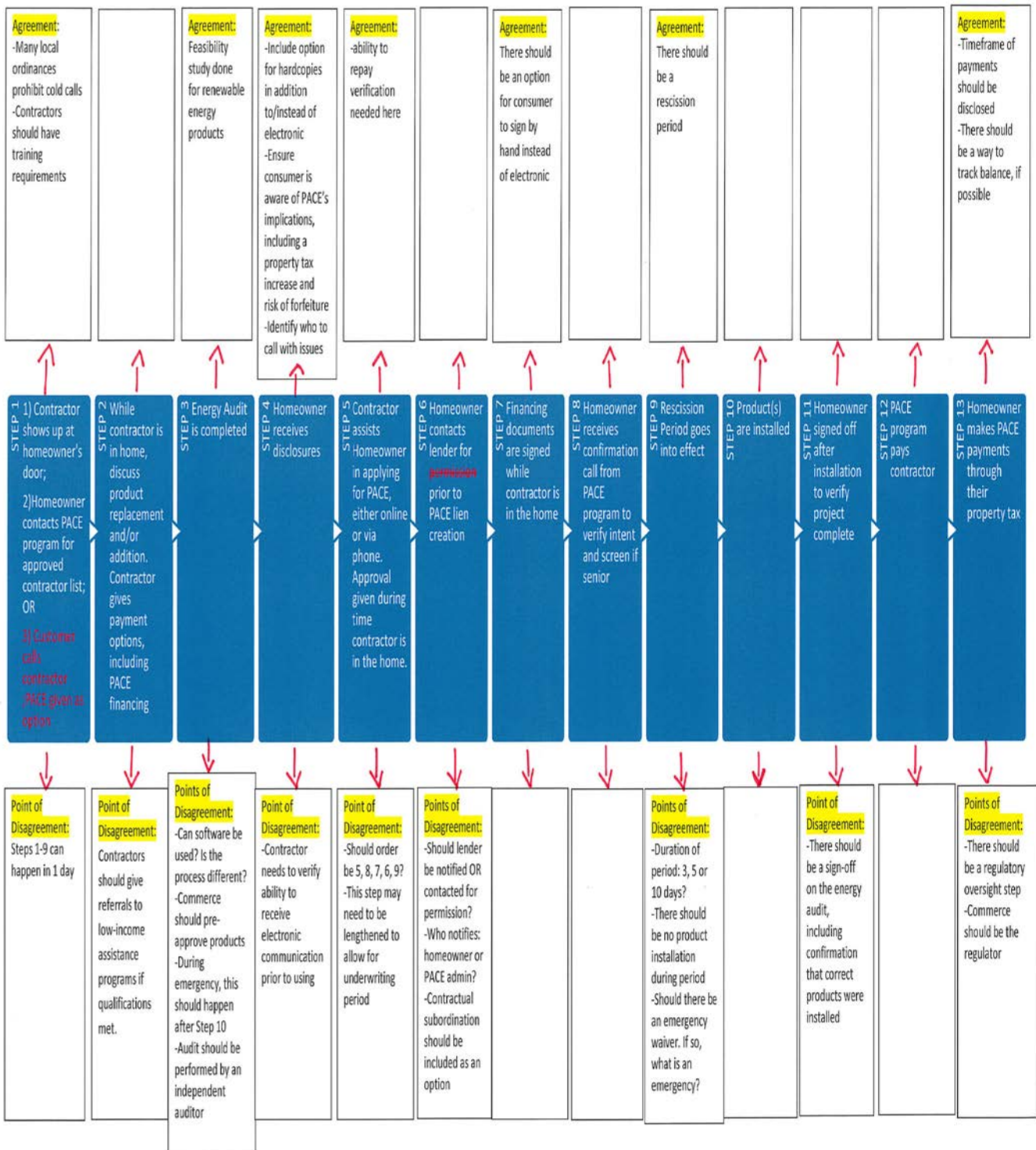
In addition to the presentations, the Task Force held small group discussions to discuss the timeline of PACE projects and points within the timeline in which consumer protections for low-income, elderly, and vulnerable populations should be considered by the Task Force.

Megan Verdeja, Government Affairs Liaison with the Commerce Department, developed a timeline of potential Residential PACE projects for the Task Force. The goal was to identify the different steps within Residential PACE project development and at which points in the process consumer protections should be considered. The Task Force split into small groups to discuss the project timeline and each of the steps within the timeline. The

combined discussions resulted in an overall PACE Timeline document that highlights points of agreement and disagreement among members of the Task Force. The 13 steps found in the timeline below are as follows:

- **Step One** – A contractor arrives at the home upon homeowner request or the homeowner contacts the PACE program for approved contractor list.
- **Step Two** – Discussion in home about potential energy efficiency and renewable energy projects, and the contractor gives payment options, including PACE financing.
- **Step Three** – An energy audit and/or renewable energy feasibility study is completed.
- **Step Four** – The homeowner receives disclosures for PACE financing if this option is selected.
- **Step Five** – Contractor assists homeowner in applying for PACE, either online via phone. Approval can be given during the point of sale.
- **Step Six** – The homeowner contacts their home mortgage lender prior to PACE lien creation (not required under current Minnesota law).
- **Step Seven** – The homeowner signs financing agreement at the point of sale.
- **Step Eight** – The homeowner receives a confirmation call from the PACE program provider to verify intent and screen for diminished capacity of the homeowner (this is not required under current Minnesota law).
- **Step Nine** – A rescission period goes into effect (no rescission period under current Minnesota law).
- **Step Ten** – Products are installed.
- **Step Eleven** – The homeowner signs off after installation to verify the project is completed.
- **Step Twelve** – The PACE program provider pays the contractor for services rendered.
- **Step Thirteen** – The homeowner makes PACE payment through a special assessment on property.

The following chart demonstrates the sequence of these steps. The chart also includes areas of agreement and disagreement on the Task Force’s understanding of these steps, the necessity of each step, or the adequacy of each step.



During the small group discussions, a number of themes surfaced. Within each step and theme, risks to the consumer were identified and in some areas, ideas were generated to mitigate the risk or improve the process. Some of the areas of concern by the Task Force have already been identified in other areas of the report, but

additional clarity of the issues were attained by looking at the project timeline and how the risks may manifest themselves.

### **Timing, Order and Adequacy of Steps**

Most Task Force small groups noted that Steps 1-9 could actually occur in one day, which raised some concerns about whether adequate time was being taken for underwriting, energy auditing, and other activities that result in a successful, appropriate PACE project. One Task Force representative indicated that this timing was necessary to ensure project implementation and cost-effectiveness of the project. Another group discussion point was whether the order of the steps were correct and that potentially Step 6 (Home Mortgage Lender Contact) needs to occur after the finance documents are signed and diminished capacity screenings are complete. Some Task Force members proposed that there should be additional steps added to address future regulatory compliance or to make the homeowner aware of the payment schedule or balance tracking tools.

### **Contractor Requirements**

The Task Force discussed whether contractors promoting PACE financing needed special training regarding what information can and cannot be provided to the homeowner, especially during steps 1-5. Some members proposed that an additional consumer protection should be established requiring the contractor to verify that a homeowner has the ability to receive electronic communications if that is how information will be provided. There was Task Force agreement that hard copies should be provided to the homeowner in the event they are not able to receive electronic information.

### **Disclosures**

There have been ongoing Task Force discussions regarding what disclosures should be required at the point of sale and when the homeowners close on the financing agreement. Additional disclosures were discussed in the context of project time. Three disclosures were proposed for consideration including one that lets the homeowner know the payment schedule and how to track the balance of the special assessment, another disclosure should identify which agency or third party a homeowner should call with issues, and lastly, a disclosure that lets the homeowner know the potential for losing their home if they miss their property tax payments. There was general agreement that these types of disclosures should be provided in some form.

### **Emergency Repair Scenarios**

The Task Force groups had considerable discussion about how Residential PACE works for emergency equipment replacement needs, especially using this project implementation timeline. One group thought that if Residential PACE was going to be for emergencies, the energy audit requirement could be an impediment to implementation and perhaps the energy audit should be required after installation for emergencies. There was also discussion that the rescission requirement could be waived for emergencies. However, there was concern for use of Residential PACE for emergencies in any case and the people are particularly vulnerable to exploitation during these situations. The Task Force agreed that further consideration needed to be given to consumer protections as it relates to using Residential PACE for emergencies.

## **Energy Audit Requirements and Timing**

The Task Force small groups had many questions about the energy audit step in this process. There was discussion regarding whether an independent party should perform an energy audit rather than the contractor that is selling a project and signing customers up for PACE financing. Other questions were raised about whether the audit needed to be performed by a certified energy auditor or it was adequate to use an energy auditing software tool. Current practices vary in Minnesota depending on the program. There were additional discussions about assurances that the correct products were installed that were recommended in the energy audit and if some form of independent verification was necessary. There were further discussions as to whether the auditing requirement is necessary and how it acts as a potential consumer protection. It was also noted that Minnesota might be one of the only states that has an energy audit requirement in statute. No consensus was achieved by the Task Force on this issue.

## **Underwriting Process**

There was general concern in the Task Force small group discussions that underwriting process occurred too quickly in the sequence of events and that more time should be taken for this step. There was Task Force discussion that if there were increased requirements during the underwriting process, it may slow down the process and allow for adequate time. There was Task Force agreement that an ability to pay process needed to be included in Step 5.

## **Screening for Other Programs**

As presented in other Task Force meetings, there are other energy programs that can help customers finance efficiency and renewable energy projects. There are programs specifically designed to help low-income consumers. The Task Force discusses how Residential PACE contractors make consumers aware of other available programs or financing options that may better meet the needs of the consumer. Some Task Force members suggested there should be a requirement on the contractor to screen for other program eligibility; however, there was not agreement that this should be a requirement on the contractor.

## **Rescission Period**

The Task Force discussed, but did not come to any agreement regarding how long the rescission period should be. It was proposed that the Task Force should look to other states and financing regulations for guidance.

At the conclusion of this Task Force meeting, there was general agreement that the group would like an overview of California's legislation to increase consumer protections in their Residential PACE programs. There was also general agreement that there were still outstanding questions and information the Task Force needed before recommendations could be made on consumer protections. There was disagreement about whether this Task Force should use California's laws as a starting point for recommendations and that there may be laws in other states this Task Force would be interested in using. Other members countered that California has the most experience with Residential PACE programs and has already discussed many of the issues the Task Force is currently addressing.



# Cost effectiveness of PACE-enabled energy improvements

## **Task Force Duty**

Establish criteria to ensure the cost-effectiveness of PACE-enabled clean energy improvements.

## **Issues**

The Task Force held two meetings in which the cost-effectiveness criteria for PACE-enabled energy improvements were discussed. During the July 27<sup>th</sup> meeting a high-level overview of the energy improvement requirements in the PACE statute was provided by Jessica Burdette, State Energy Office Manager. During the October 5<sup>th</sup> meeting more in-depth presentations were provided by Mark Hastie with the Commerce Department, Chris Duffrin with Center for Energy and Environment, Peter Aramchuck and Zoe Erdman from Efficiency Vermont, and Katerina Robinson with the State of California. Overall, the Task Force was provided information about how cost-effectiveness is currently determined for energy efficiency and renewable energy projects as well as how it is operationalized in existing Residential PACE programs. While these two meetings addressed cost-effectiveness criteria, other items were discussed. There were no cost-effectiveness criteria agreed upon during these meetings.

## **Energy Improvement Requirements in MN Presentation Overview**

Jessica Burdette of the Commerce Department provided the Task Force information about the existing statute and about the relevant concepts related to identifying energy improvements and determining their cost-effectiveness. The presentation included information about energy audits, renewable energy feasibility studies, and cost-effectiveness evaluation methodologies.

### **Energy Audits**

Relevant Current Law: 216C.435 DEFINITIONS. Subd. 4. Energy audit. "Energy audit" means a formal evaluation of the energy consumption of a building by a certified energy auditor, whose certification is approved by the commissioner, for the purpose of identifying appropriate energy improvements that could be made to the building and including an estimate of the length of time a specific energy improvement will take to repay its purchase and installation costs, based on the amount of energy saved and estimated future energy prices.

There are no prescribed energy audit requirements in the statute governing Residential PACE in Minnesota; however, the Commerce Department is required to approve certification for energy auditors with the expectation that any energy auditor operating under existing statute would perform an energy audit to the standards of their certification<sup>29</sup>. Currently, the Commissioner of Commerce approves use of the Association of Energy Engineers Energy Auditor Certification requirements.<sup>30</sup>

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<sup>29</sup> Minnesota Statute § 216C.435 Definitions. Subdivision 4 Energy audit.

<sup>30</sup> <https://www.aeecenter.org/certifications/certifications/certified-energy-auditor>

In standard practice, an energy audit helps an occupant pinpoint where their home is losing energy and what they can do to save energy and money. An energy audit will also assess health and safety issues that might exist in their home. The audit involves two parts: the in-person home assessment and subsequent analysis of collected data using computer software. During a home assessment, an energy auditor will use several tools to perform the audit. Infrared cameras determine air leakage and insulation levels in the house. Combustion analyzers sample flue gases in vented combustion appliances and measure flue gas temperature, leaks, and carbon monoxide. A blower door simulates the effect of a 20-mile-per-hour wind and helps to locate air leaks. A wattmeter measures the electrical energy used by various devices throughout the home. During an audit, the energy auditor will interview the occupant to learn about potential problems and the home's operation. The auditor will inspect the attic for the following:

- insulation levels
- major air leakage issues
- wiring safety issues
- signs of water leakage

In the basement, an auditor will inspect for the following:

- the furnace for fuel leaks
- the furnace blower
- the water heater thermostat setting
- the insulation on tank and piping
- Combustion Appliance Zone Testing on fuel-fired appliances
- the duct system and dryer venting

Throughout the entire house, an auditor will inspect for the following:

- electrical hazards
- appliance energy usage
- moisture and excess water vapor
- ventilation fans for flow rates
- windows and doors
- smoke and carbon monoxide detectors
- lighting fixtures and recessed lighting
- indoor air quality problems and lead-based paints
- thermostat type and settings
- air leaks around outlets, fixtures, doors, and windows

Once the auditor has completed the site visit, they will analyze the findings and create a comprehensive home energy report. They will analyze the past year's utility bills to determine base energy consumption. This report

will show which energy efficiency upgrades are best for the home and the potential energy savings. These upgrades can save between 5% to 30% percent on the monthly energy bills<sup>31</sup>.

The cost of an energy audit varies greatly depending on location and available subsidies to cover the cost of an energy audit. Often, for income-qualifying customers, energy audits are at no cost, but a customer that has no access to income-qualifying or utility energy audit programs, an audit could cost a few hundred dollars.

### **Renewable Energy Feasibility Study**

Relevant Current Law: 216C.435 DEFINITIONS. Subd. 10. Renewable energy system feasibility study. "Renewable energy system feasibility study" means a written study, conducted by a contractor trained to perform that analysis, for the purpose of determining the feasibility of installing a renewable energy system in a building, including an estimate of the length of time a specific renewable energy system will take to repay its purchase and installation costs, based on the amount of energy saved and estimated future energy prices. For a geothermal energy improvement, the feasibility study must calculate net savings in terms of geothermal energy and costs.

A Renewable energy system feasibility study helps a site owner to determine the potential and cost to produce renewable energy on site. A feasibility study includes an assessment of available onsite renewable resources, siting considerations, on-site energy and demand profile, funding opportunities, and permitting and interconnection requirements. The results of the feasibility study will identify locations for the appropriate type of generation equipment, generator size to fit on-site needs, timeline for permitting and installation, installation cost, energy production, ongoing maintenance expenses, and return-on-investment. There are currently no generic certifications for professionals conducting renewable energy feasibility studies; however, there are certifications for installers, inspectors or assessors of projects for different technologies like solar photovoltaics or small wind generators. The cost of a study varies widely depending on size, scope and technologies under consideration.

### **Cost-Effectiveness Criteria**

Relevant Current Law: 216C.435 DEFINITIONS. Subd. 3a. Cost-effective energy improvements. "Cost-effective energy improvements" mean energy improvements that have been identified in an energy audit or renewable energy system feasibility study as repaying their purchase and installation costs in 20 years or less, based on the amount of future energy saved and estimated future energy prices.

During the analysis phase of an energy audit or renewable energy system feasibility study, the analyst will determine which improvements are cost-effective using cash flow analysis while considering factors including equipment life, equipment cost, energy savings, future energy prices, and potential financial incentives like rebates. There are four main cash flow analysis used in energy auditing: simple payback period, net present value, return on investment, and benefit-cost ratios. In the simple payback period, the project cost is divided by

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<sup>31</sup> US Department of Energy: Energy Auditing Information <https://energy.gov/articles/energy-saver-101-infographic-home-energy-audits>

the annual savings to obtain a simple payback. In order to be cost-effective, the payback period needs to be less than the life of the equipment. This method does not consider any time-value of money or future energy costs. The net present value method is a measure of investment worth that accounts for the time value of money and needs a value greater than \$0 to be cost effective. Return on investment considers the lifetime savings of the product divided by the original investment. The result is a percentage and needs to be greater than 100% to be cost-effective. The benefit-cost ratio considers the benefits (lower utility bills, rebates) compared to the costs (the purchase of efficient equipment) and needs a value greater than 1 to be cost effective. When determining the cost-effectiveness of a residential energy efficiency or renewable energy project, the simple payback method is most often used.

This cost-effectiveness analysis helps ensure that appropriate investments in capital improvements are made and that the benefits outweigh the costs. This is a form of consumer protection.

## **Minnesota and California Comparison Presentation**

Mark Hastie with the Commerce Department gave the Task Force a side-by-side comparison of Minnesota and California's PACE laws, including:

- Comparison of Minnesota's current Residential PACE law with California's recently passed bills AB1284 and SB242
- Overview of lien status, not-to-exceed financing provisions, financing term limits, payment requirements, and loan-to-market value ratios
- Detail comparisons of provisions that require determinations for ability to pay
- Overview of each statute's provisions that address point-of-sale confusion and disclosure requirements
- The presenter drew the audience's attention to the two forms that were handed out at the start of the meeting, including California's Right to Cancel Form and Financing Form

Task Force members discussed that some income verification data can be waived in California, but must be verified at a later day.

Further discussion centered on how to enforce these laws. California provided for oversight under their recently passed legislation, which goes into effect April 1, 2018. PACE administrators have agreed to pay for their regulation costs under this new law.

## **Efficiency Vermont Presentation**

Peter Aramchuck and Zoe Erdman with Efficiency Vermont provided the Task Force an analysis of Vermont's Residential PACE program with specific focus on lien and underwriting issues.

Vermont was the Third State in the Nation to do PACE after California and Colorado, but adopted only residential and not commercial PACE. At the time, Vermont saw PACE as a good financing alternative. After Federal Government shut down PACE in 2010, Vermont changed their program from a senior lien to junior lien position. The junior lien position forced Vermont to "go it alone."

Most of the PACE-related projects in Vermont have been efficiency projects, with a few solar panels appearing as well. These efficiency measures are primarily insulation and air sealing. A portion of Vermont's PACE program allows for health and safety (asbestos remediation, etc.)

When Vermont's PACE Program was set up, the State's Department of Financial Regulation was very cautious and put in place debt to income requirements. Mr. Aramchuck felt the requirements had the "worst characteristics of a bank loan and an assessment." Mr. Aramchuck recommended to the Task Force that Minnesota not make the requirements so onerous. An example of this was the requirement around the savings to investment ratio that equals or exceeds a tax assessment savings allowing for paying a PACE assessment. DOE best practices says it cannot exceed 100%, but Vermont only allowed for 90%. Energy Prices continue to increase, so it is certain that energy costs will go up. People who sign up for a PACE program consent to a random audit, which checks-in and verifies that the ratio is trending in positive direction.

Vermont's residential PACE program has not been successful. Only 42 out of Vermont's 241 towns ended up doing some kind of PACE project. The program structure is complex for homeowners, contractors, municipalities and small towns. In light of 6 current assessments active in the state, Vermont has decided to suspend the PACE program in favor of a less complicated "Heat Saver" loan program, which is a \$35,000 unsecured loan that is funded by State banks and credit unions and easier for consumers. Their PACE statute will stay on books but Efficiency Vermont will not be doing any new PACE financing.

## **Energy Audit Presentation**

Chris Duffrin, Center for Energy and Environment (CEE), presented to the Task Force on the role of an audit in identifying PACE-enabled energy improvements.

An energy audit's purpose is to help homeowners understand energy costs. The auditor has no financial interest with the homeowner. Each 2-hour audit aims to make the home efficient, healthy, durable and comfortable in the most cost effective way.

Minnesota homes use \$1,864 worth of energy each year. 65% of \$1,864 is heating and cooling, 15% is water heating and the rest is appliances, lighting and electronics.

Audits focus on six main areas:

- Prevent conditioned air from escaping
- Using efficient systems
- Heating and cooling when homeowner is not at home
- Low energy lighting appliances (Energy Star)
- Make sure that combustion appliances are venting properly
- Fresh air to breathe inside home

CEE Energy Auditors provide an energy report with the results of the audit to the homeowner. The homeowners then can make plan with an energy advisor from CEE who can connect them with financing.

Quality Assurance Programs are important. Third party inspectors inspect jobs and provide feedback to contractors. CEE will put contractors on probation or remove completely if not doing the job properly. This is especially important with insulation contractors.

Mr. Duffrin touched on concerns specifically related to insulation. Insulation contractors in CEE programs and Minnesota utility programs are required to use blower doors for air sealing, not all insulation contractors are doing so. Attic Insulation is an easy way to help make homes energy efficient, but the story and a half attics that are found in large numbers in the Twin Cities are hard to deal with. Contractors that are bad actors sell scams like reflective film, and contractors that are going door to door are most likely not legit. Wall insulation is a difficult area for homeowners, as there is no good way to know how much insulation is in there without verification from an energy auditor. This is an area where there are scams as some contractors use illegitimate products rather than dense-packed insulation.

Some Task Force members expressed concerns during the presentation regarding the time lag between when a homeowner requests an audit and when the auditor is able to make it to their house to complete the audit. CEE indicated that after requesting an audit, it would be between 2 days to a week before an auditor is able to make it to the home.

Additional concerns were expressed regarding the price of an energy audit. An average audit costs between \$200-\$300, and travel time may add to the cost. Some larger utilities are able to subsidize audits so that the cost to the homeowner is closer to \$60-\$100, but not all utilities offer these subsidies.

## **The California Experience Presentation**

Katerina Robinson, Legislative Director to California State Senator Mary Skinner, presented to the Task Force on the state of residential PACE in California and recent legislation adopted. Both of the most recent 2017 PACE bills were signed into law by Governor Jerry Brown on October 4. Ms. Robinson expressed that she is not expecting another large PACE bill in 2018, but they may need to do some clean-up.

California has had success with PACE Programs, with the City of Berkeley being the first in the nation to do PACE. They saw a need to “bridge the gap” with traditional financing, since traditional financing is not always available. It is a growing way of financing clean energy projects in California, growing from \$350Million in 2014 to \$2.6 Billion in 2017. As the program grew, issues arose that needed to be addressed by the legislature.

California is committed to clean energy policy; it has goals of a 40% reduction in Green House Gas by 2030. The state is committed to making the PACE program work but also needed to make sure that the program worked for homeowners.

The main issues that arose centered on contractors not representing the program properly, especially to seniors and the elderly. Bankers and Credit Unions in California had issues with lien position, although this issue was not addressed in the recently passed legislation. Governor Brown did not want to address the lien position issue, as he believes the matter should be left with the Federal Government.

There have been no foreclosures in California. There have been instances of default when first payment came due but these homeowners worked with the State to get this worked out.

California does not require audit, but has good estimates of the savings. For energy efficiency, if you spend all the time on audits you will not get the savings on the ground. Ms. Robinson believes it is hard to develop an economic model and it makes process more onerous for contractors and consumers. Utilities do them free in California, so some homeowners do it before they look into PACE. California had discussions around included a more robust list of approved appliances and upgrades to include in their statute in place of an audit, but ultimately the updated list did not pass in the 2017 legislation.

Key Components of recent PACE Legislation, include:

- Confirmed terms call
- Documents made available to homeowner and follow up call to make sure they understand the terms of the contract including the estimated monthly payment
- Must provide follow up phone call in homeowners primary language
- Extended right to cancel (3 days) Added reporting requirements that require PACE providers to report to local government and make public on local government website copies of the report. Specifies what contractors cannot do:
  - Need to be licensed
  - Cannot offer cash payment discount
  - Cannot say they are tax experts
  - Cannot offer reduced percentages of interest
  - Cannot say it is a free program
- Requires PACE providers to be licensed by the California Department of Business Oversight (DBO) and requires training for contractors. Background checks and fingerprinting also required by DBO.
- Sets basic requirements for PACE Contracts
- Requires a lien database for the State to get answers about property defaults. They could not tell from the tax rolls which properties had a PACE assessment and which did not. They will use this for oversight and to help satisfy reporting requirements. California hopes this will allow them to get better numbers by Zip Code as to where PACE assessments are placed and allow tracking over time.

In closing, Ms. Robinson stressed that the most helpful thing in California was getting everyone around a table to go through areas where there were issues with PACE. It took some putting aside broader political issues with PACE and work to fix the consumer concerns first and then other issues. California found it hard, though, that many of the consumer groups did not have the capacity and funding to be in continuous negotiations, which made the process harder.

## **Task Force Discussions**

### **Disclosures**

The Task Force discussed that when thinking about disclosures, there cannot be too much to read and must be written at an eighth grade level. They need to be made simple. Renovate America's disclosure form is modeled after Know Before You Owe.

## **Property Value Determination**

The Task Force discussed how property value would be determined. Renovate America uses the standard county model. Minnesota would use the county model, which is the same process second mortgages use.

## **E-sign Act**

The Task Force discussed the component in the federal E-sign Act that requires if documents are provided electronically, the financier must verify the consumer can accept these documents through electronic means.

## **Fees**

There was discussion with the Task Force regarding whether cities or local units of government are receiving fees on PACE projects. The League of Minnesota Cities responded that cities could charge for its staff person's time on the project. In relation to extra fees, another Task Force member commented that in Commercial PACE, no one charges or receives extra fees, although there are some minimal fees for processing.

## **Public Comment**

The Minnesota Homeownership Center (in the audience) stressed that consumers can get education in advance. The MN Homeownership Center offers third party resources. They also highlighted that there are some types of loans that require consumers to receive financial counseling prior to signing.

The Minnesota Mortgage Association (MMA) stated that residential PACE feels like a loan with no lender taking responsibility. They cannot figure out who is originating the loan. They see an obvious answer is to license providers as lenders. If someone is providing home loans, they should be licensed and registered in the NMLS.

## **Other issues that the Task Force identified that are necessary to protect consumers**

### **Emergencies**

While some members of the Task Force expressed interest in relaxing the PACE application process in emergency situations such as replacement of a failed furnace, other members of the Task Force are not convinced that PACE is the best option for emergency situations since there are other loan products available through entities like the MHFA and the Weatherization Assistance Program. Likely, this issue will occur more frequently in Minnesota than in two other states where residential PACE exists, California and Missouri.

## **Other issues that the Task Force discussed**

### **California Law**

During the time of the Task Force meetings, California passed two bills that made significant changes to its PACE law. Commerce Department staff prepared and presented to the Task Force a side-by-side overview related to the Task Force duties with Minnesota compared to the California bills. Here is a table outlining some key areas:



Issue	Minnesota	California
PACE Liens	<ul style="list-style-type: none"> <li>• Payment is secured with a lien against the property and payments are collected as a special assessment</li> <li>• Financing cannot exceed 20% of the assessed value of the property</li> <li>• Cost-weighted average maturity not to exceed the useful life of the improvement – max. 20 years</li> <li>• Payment can be made in up to 20 equal installments</li> </ul>	<ul style="list-style-type: none"> <li>• Payment is also collected as a special assessment and is subject to a potential lien</li> <li>• Financing cannot exceed 15% of first \$700,000, and 10% of the value above \$700,000</li> <li>• Total amount of property taxes and assessments cannot exceed 5% of the property’s market value</li> <li>• Total PACE assessments and mortgage-related debt cannot exceed 97% of the market value of the property</li> <li>• PACE administrator must verify the existence of recorded PACE assessments and ask if the property owner has authorized additional assessments that have not yet been recorded</li> </ul>
Ability to Repay	<ul style="list-style-type: none"> <li>• Can only provide financing to those who demonstrate an ability to repay</li> </ul>	<ul style="list-style-type: none"> <li>• Must make a reasonable good faith determination that owner has a reasonable ability to repay</li> <li>• It is based on the property owner’s income, assets, and current debt obligations</li> <li>• The following factors must be used:</li> <li>• Owner must submit monthly income and housing expenses – income must be sufficient to meet the PACE payments, any mortgage-related payments, and all existing debts, with sufficient residual income to meet basic household living expenses.</li> <li>• Housing expenses includes all mortgage and property tax related payments</li> <li>• Debt obligations, including monthly debt obligations verified by consumer credit reports, and all secured/unsecured debt, alimony, child support, monthly housing expenses</li> </ul>

		<ul style="list-style-type: none"> <li>• The equity of the property is not considered for this analysis</li> <li>• Income and assets must be determined using reasonably reliable third-party records (statute gives a list of examples such as: current pay stubs, tax returns, W-2s, bank/investment statements, government agencies for benefits/entitlements)</li> <li>• Some of the requirements may be waived in the case of “emergency or immediate necessity” for a system whose primary function is temperature regulation in a home with a maximum total cost of \$15,000 or \$125 per month</li> </ul>
<p>Point-of-Sale Confusion and Disclosures</p>	<ul style="list-style-type: none"> <li>• Requires disclosures to borrowers of the risks involved in borrowing, including the risk of foreclosure if a tax delinquency results from a default</li> <li>• A PACE program must include cooperation and coordination with the conservation improvement activities of the utility serving the property, and other public and private energy improvement programs</li> </ul>	<ul style="list-style-type: none"> <li>• Creates an entire licensing scheme whereby PACE administrators are required to be licensed under the California Financial Code in mostly same way as other Consumer Finance Lenders, and is subject to supervision and enforcement by the Department of Business Oversight</li> <li>• Creates “PACE solicitor” or “PACE solicitor agent” (essentially a licensed contractor)</li> <li>• PACE administrator must establish and maintain a training program for agents that includes an introductory training and 6 hours of training on various topics related to PACE programs/disclosures, ethics, fraud prevention, consumer protection, nondiscrimination, and senior financial abuse</li> <li>• PACE administrator must have a risk-based, commercially reasonable procedure to monitor and test compliance of PACE solicitors, monitor their license/registration status, and do periodic review of their solicitation activities</li> </ul>

		<ul style="list-style-type: none"> <li>• The contractor may not provide a different price for a project financed by PACE than if they were paid in cash by the property owner</li> <li>• Right to Cancel (see attached form in packet)</li> <li>• Financing and Estimate Disclosure Form (see attached form in packet)</li> <li>• In addition, before an owner executes an assessment contract, the PACE administrator must make an oral confirmation of the key terms in the contract, including items such as: <ul style="list-style-type: none"> <li>• Ensuring the property owner on the call review the contract with all owners of the property</li> <li>• The total annual estimated costs, including how much the owner would have to save monthly to pay the annual costs</li> <li>• When the annual property tax bill will mailed</li> <li>• The term of the contract</li> <li>• If owner pays property taxes through an escrow account, that they should notify their mortgage lender to discuss adjusting monthly payments to meet the PACE assessment</li> <li>• That any potential utility savings are not guaranteed</li> <li>• The right to cancel period</li> </ul> </li> </ul>
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The Task Force was split on how to proceed in light of the passage of the California bills. A number of Task Force members wanted to use the new California law as the starting point for any new consumer protections to be considered for Minnesota. However, a number of members were willing to take note of what California had done, but would rather start from scratch and incorporate provisions from the California law if the Task Force deems they are a good fit for Minnesota.

The presentation by Katerina Robinson with the California legislature acknowledged that the end bills represented some compromises by consumer and industry groups, and that some issues may still have be resolved in future legislation.

## **Authority for a private third-party administrator**

One member of the Task Force noted that the existing PACE statute appears to contemplate PACE must be operated by a government entity and not by a private sector entity. The member questioned whether there is the legal (statutory) authority for any entity other than a government entity to operate a PACE program and utilize the county tax collection process to obtain homeowner repayments of PACE financing. The member pointed out that, under the existing PACE statute, only an “implementing entity” can administer a PACE program.<sup>32</sup> An “implementing entity” is defined as “the local government or an authority designated by the local government.”<sup>33</sup> A private entity is neither a local government nor an authority. Therefore, the member asked what authority under the statute would allow a third party, private administrator to administer and implement a residential (or commercial) PACE program.

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<sup>32</sup> Minn. Stat. § 216C.435, subd. 6 (providing that an “implementing entity” can “implement and administer programs described in section 216C.436.”).

<sup>33</sup> Minn. Stat. § 216C.435, subd. 6. An “authority” is “a housing and redevelopment authority or economic development authority created pursuant to section 469.003 [a City Housing and Redevelopment Authority], 469.004 [a County or Multicounty Authority], or 469.091 [an Economic Development Authority], a port authority pursuant to section 469.049, 469.1082, or special law, or another entity authorized by law to exercise the powers of an Authority created pursuant to one of those sections.” Minn. Stat. § 216C.435, subd. 2.

## Task Force Recommendations

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The Task Force received two versions of draft legislation to discuss as a group. Renovate America provided one version (Appendix A) and the coalition consisting of the Minnesota REALTORS®, Legal Services Advocacy Project, the Minnesota Bankers Association, the Center for Energy and Environment, and the Minnesota Credit Union Network (Coalition) provided the second version (Appendix B). Commerce provided a side-by-side analysis of the draft legislation to identify similarities and differences for the Task Force. Over two meetings, the authors of the legislation presented on their proposed language and stood for questions from the Task Force and the public.

Although common themes were identified in both drafts, significant differences remained and the Task Force made the recommendation to include both drafts with the report and provide an overview of both pieces of legislation. Commerce asked each of the Task Force members to provide comment on the proposed legislation for inclusion in the report. The Department received comments from all of the members of the Task Force, as well as from the Minnesota Mortgage Association and the Minnesota Home Ownership Center.

In general, the response received from the Association of Minnesota Counties (AMC), the League of Minnesota Cities, MnSEIA, Clean Energy Economy Minnesota (CEEM) and the St. Paul Port Authority (SPPA) have indicated support for the version drafted by Renovate America.

In addition to the members of the Coalition, AARP Minnesota expressed support for the Coalition draft language.

The Minnesota Land Title Association (MLTA) took no position on either of the drafts provided. The only concern the MLTA provided is whether they can determine if a PACE assessment is attached to the real property. They want to ensure the integrity of the real estate property records.

The remaining members provided specific feedback to provisions in each of the draft legislation as outlined below.

### Recommendations

Below are some of the issues broken down in each piece of draft legislation, including Task Force member positions.

#### Underwriting Standards

Fresh Energy supports the recommendations in both bill drafts for underwriting requirements as opposed to equity-based lending. The drafts differ in detail on how the underwriting analysis is conducted.

#### Residential PACE's Status as a Loan

The Coalition's draft refers to PACE as a loan, rather than an assessment. The Coalition points out that its references to PACE financing as a loan does not change the legal status of the financing as a special assessment. CUB also believes that PACE appears to be a loan repaid through a special assessment, and notes that the

MinnPACE commercial program refers to its financing as a loan in several places on its website. The term “loan” is understandable to consumers.

Renovate America and CEEM do not support referring to PACE financing as a loan. Renovate, CEEM and MnSEIA support continued use of the term special assessment. CEEM points out that Minn. Stat., chapter 429 differentiates between assessments and loans and provides governance unique to a property improvement project defrayed by a special assessment (such as PACE). CEEM believes disclosure provisions address consumer protection concerns, as directed by the legislation, but changing the definition of PACE does not.

### **Low-Income Protections**

The Coalition’s draft provides for mandatory referrals of low-income residents to low-income programs prior to using residential PACE financing.

Fresh Energy supports mandatory referrals of low-income residents, but does not support automatically excluding low-income residents from the residential PACE program.

CUB believes that, where options exist to help consumers finance energy improvements, it is reasonable to require PACE administrators or contractors to make those options known to their customers. This includes energy efficiency rebates and incentives offered under the CIP program<sup>34</sup>, the Low-Income Weatherization and the Low-Income Home Energy Assistance Programs, and financing from the Minnesota Housing Finance Agency.

### **Emergency Replacements**

Renovate America’s draft allows waivers for emergency replacements while the Coalition’s draft does not.

Fresh Energy does not support waiving income verification procedures in emergencies. There are a number of other loan products in Minnesota that carry far less risk than PACE loans in emergencies. Fresh Energy also stated that placing a lien on a home with a higher than average interest rate in an emergency when alternatives exist may not be in the public interest.

CUB shares the concern as many on the Task Force that consumers in emergencies are especially vulnerable, and CUB believes that protections are necessary to avoid encouraging consumers to make poor choices when they are under pressure to replace needed equipment, such as a heat source in the winter. CUB believes, though, that the bill as currently drafted by the Coalition may be too restrictive to work in an emergency replacement situation, but believes a compromise can be found to address this concern.

### **Disclosures**

Both Renovate America and the Coalition drafts address disclosures. Renovate America provides language in its bill that mirrors mortgage-level disclosures and are currently used by national PACE providers. Neither draft applies TILA or RESPA to residential PACE, but both include language that reflect many provisions in both laws.

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<sup>34</sup> Minn. Stat. § 216B.241

Fresh Energy supports disclosure frameworks presented in the two bills. Fresh Energy strongly supports a simple one-page disclosure form similar to the one presented by the Coalition that condenses the most important aspects a borrower should know when applying for PACE financing. Fresh Energy has concerns, however, about the exact wording in the Coalition bill as drafted.

CEEM agrees that disclosures should be simple, written in clear and concise language for the consumer to understand, and should be based on truth and facts that inform consumer choice. They believe the disclosure requirements should not intentionally and purposefully advantage one financing type over another, nor should the disclosure requirements go unreasonably beyond what is required of similar lending agencies.

### **Definition and application of “Cost-effective Energy Improvement”**

Fresh Energy and CUB support the requirement that energy improvements be tied to Conservation Improvement Program (CIP) eligibility and that using the Commerce Department’s Technical Manual as a baseline is most appropriate, as drafted in the Coalition’s bill. CUB also supports permitting the Department of Commerce to list additional eligible measures specific to residential PACE.

Fresh Energy does not support an Eligible Measures list developed by a PACE Administrator that does not have approval from Commerce, as drafted in the Renovate America language.

### **Energy Audit Requirement**

The Coalition, Renovate America, and Fresh Energy are supportive of removing the energy audit requirement, although the Coalition and Fresh Energy only support removing the requirement if the CIP eligibility is required.

CUB would support an option for an energy audit in addition to an eligible measures list, if the audit be conducted by an independent, certified auditor, as provided in Minn. Stat. § 216C.435, subd. 4.

### **Consumer Protections**

Fresh Energy and MnSEIA generally support all the consumer protections presented in both bills. Fresh Energy supports a requirement that a paper copy of the PACE contract be distributed to the homeowner within 5 days of electronically signing the contract. Fresh Energy also supports expanded protections for vulnerable homeowners, including the protections in the Coalition’s draft, noting that it is their position that vulnerable adults have other options for financing that carry less risk than a PACE lien and the Coalition bill more adequately protects vulnerable adults.

### **Regulation**

Fresh Energy supports the provision that contractors must be licensed and they must abide by all state best practices for contractors, including banning deceptive and devious practices and aggressive door-to-door sales of PACE assessments.

Renovate America does not support the contractor requirements as proposed in the Coalition’s bill and states that contractors should not have to meet different licensing requirements than a contractor working for another company. CEEM agrees with Renovate America and believes that additional licensing requirements for PACE

financed contractors would treat participants in the same industry unreasonably different, creating additional barriers to consumers leading to uncertainty in Minnesota's fastest growing industry sector.

Fresh Energy and CUB support the provision in the Coalition's bill that the Commerce Department be the regulating administrator for the PACE program in Minnesota and provide oversight of licensing to PACE Administrators. CUB also notes that the bill should be explicit about Commerce's oversight role as well as the relationships and lines of accountability among and between the Department, implementing entities, administrators and contractors.

### **Lien Position**

Fresh Energy believes the lien issue is fundamentally unresolvable by the Task Force. They are uncertain whether a residential PACE program will exist even with the passage of a superior lien status in Minnesota due to guidance from the Federal Government. Fresh Energy also states that while granting a subordinate lien status to residential PACE programs may also create hurdles to program development, provisions to the statutes have been included in the Coalition's bill that stakeholders should continue to assess and analyze.

Renovate America supports a priority lien position and notes that PACE cannot be treated differently than any other voluntary property tax assessment under Chapter 429. MnSEIA, AMC and CEEM support the Renovate America proposal and believe that without first lien position, PACE will not work.

### **Reporting Requirements**

All parties have agreed in principle on the list of reporting requirements in the Renovate America draft.

### **Commercial PACE**

All parties have agreed to no substantial changes to the Minnesota Commercial PACE program.



# Appendix A

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## RENOVATE AMERICA'S PROPOSED ENERGY IMPROVEMENT PROGRAM AMENDMENTS

### 216C.435 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this section and section 216C.436, the terms defined in this section have the meanings given them.

Subd. 2. **Authority.** "Authority" means a housing and redevelopment authority or economic development authority created pursuant to section 469.003, 469.004, or 469.091, a port authority pursuant to section 469.049, 469.1082, or special law, or another entity authorized by law to exercise the powers of an authority created pursuant to one of those sections.

Subd. 3. **City.** "City" means a home rule charter or statutory city.

Subd. 3a. **Cost-effective energy improvements.** "Cost-effective energy improvements" mean energy improvements that have been identified in an energy audit or a renewable energy system feasibility study as repaying their purchase and installation costs in 20 years or less, based on the amount of future energy saved and estimated future energy prices.

Subd. 4. **Eligible Measures.** "Eligible measures" means residential energy improvements that are permanently affixed to the property that meet one or more standards or certification criteria that have been established by appropriate Federal government agencies, such as the United States Department of Energy, the United States Environmental Protection Agency, state agencies, or by credible third-party private organizations that publish generally acceptable standards with respect to the measure.

Subd. 4. **Energy audit.** "Energy audit" means a formal evaluation of the energy consumption of a building by a certified energy auditor, whose certification is approved by the commissioner, for the purpose of identifying appropriate energy improvements that could be made to the building and including an estimate of the length of time a specific energy improvement will take to repay its purchase and installation costs, based on the amount of energy saved and estimated future energy prices.

Subd. 5. **Energy improvement.** "Energy improvement" means:

- (1) any renovation or retrofitting of a building to improve energy efficiency that is permanently affixed to the property and that results in a net reduction in energy consumption without altering the principal source of energy;
- (2) permanent installation of new or upgraded electrical circuits and related equipment to enable electrical vehicle charging; or
- (3) a renewable energy system attached to, installed within, or proximate to a building that generates electrical or thermal energy from a renewable energy source.

Subd. 6. **Implementing entity.** "Implementing entity" means the local government or an authority designated by the local government by resolution to implement and administer programs described in section 216C.436.

Subd. 7. **Local government.** "Local government" means a city, county, or town.

Subd. 7a. **Multifamily residential dwelling.** "Multifamily residential dwelling" means a residential dwelling containing five or more units intended for use as a residence by tenants or lessees of the owner.

Subd. 8. **Program Administrator.** "Program Administrator" means a for-profit or a not-for-profit organization which administers an energy improvement program on behalf of an implementing entity.

Subd. 9. **Property Owner.** "Property owner" means a property owner of record on the property subject to the energy improvement assessment.

Subd. ~~8~~**10. Qualifying ~~real~~ commercial property.** "Qualifying ~~real~~ commercial property" means a ~~single-family or~~ multifamily residential dwelling, or a commercial or industrial building, that the implementing entity has determined, after review of an energy audit or renewable energy system feasibility study, can be benefited by installation of cost-effective energy improvements.

Subd. 11. **Qualifying residential property.** "Qualifying residential property" means a single family or other residential dwelling of 4 or fewer units, that the implementing entity has determined, after a review of the eligible measures to be installed, can be benefited by their installation.

Subd. ~~9~~12. **Renewable energy.** "Renewable energy" means energy produced by means of solar thermal, solar photovoltaic, wind, or geothermal resources.

Subd. ~~10~~3. **Renewable energy system feasibility study.** "Renewable energy system feasibility study" means a written study, conducted by a contractor trained to perform that analysis, for the purpose of determining the feasibility of installing a renewable energy system in a building, including an estimate of the length of time a specific renewable energy system will take to repay its purchase and installation costs, based on the amount of energy saved and estimated future energy prices. For a geothermal energy improvement, the feasibility study must calculate net savings in terms of nongeothermal energy and costs.

Subd. ~~11~~4. **Solar photovoltaic.** "Solar photovoltaic" has the meaning given in section 216C.06, subdivision 16, and must meet the requirements of section 216C.25.

Subd. ~~12~~5. **Solar thermal.** "Solar thermal" has the meaning given to "qualifying solar thermal project" in section 216B.2411, subdivision 2, paragraph (e).

## **216C.436 ENERGY IMPROVEMENTS PROGRAM FOR LOCAL GOVERNMENTS.**

Subdivision 1. **Program authority.** An implementing entity may establish a program to finance energy improvements to enable owners of qualifying real property to pay for ~~cost-effective~~ energy improvements to the qualifying real property with the net proceeds and interest earnings of revenue bonds authorized in this section. An implementing entity may limit the number of qualifying real properties for which a property owner may receive program financing.

Subd. 2. **Qualifying Commercial Property Program requirements.** A financing program:

- (1) impose requirements and conditions on financing arrangements to ensure timely repayment;
- (2) require an energy audit or renewable energy system feasibility study to be conducted on the qualifying real property and reviewed by the implementing entity prior to approval of the financing;
- (3) require the inspection of all installations and a performance verification of at least ten percent of the energy improvements financed by the program;
- (4) not prohibit the financing of all cost-effective energy improvements not otherwise prohibited by this section;

- (5) require that all cost-effective energy improvements be made to a qualifying real property prior to, or in conjunction with, an applicant's repayment of financing for energy improvements for that property;
- (6) have energy improvements financed by the program performed by licensed contractors as required by chapter 326B or other law or ordinance;
- (7) require disclosures to borrowers by the implementing entity of the risks involved in borrowing, including the risk of foreclosure if a tax delinquency results from a default;
- (8) provide financing only to those who demonstrate an ability to repay;
- (9) not provide financing for a qualifying real property in which the owner is not current on mortgage or real property tax payments;
- (10) require a petition to the implementing entity by all owners of the qualifying real property requesting collections of repayments as a special assessment under section 429.101;
- (11) provide that payments and assessments are not accelerated due to a default and that a tax delinquency exists only for assessments not paid when due; and
- (12) require that liability for special assessments related to the financing runs with the qualifying real property.

**Subd. 3. Financing Requirements for Qualifying Commercial Property Programs.** Financing provided for Qualifying Commercial Property Programs must have:

- (1) a cost-weighted average maturity not exceeding the useful life of the energy improvements installed, as determined by the implementing entity, but in no event may a term exceed 20 years;
- (2) a principal amount not to exceed the lesser of 20 percent of the assessed value of the real property on which the improvements are to be installed, or the actual cost of installing the energy improvements, including the costs of necessary equipment, materials, and labor, the costs of each related energy audit or renewable energy system feasibility study, and the cost of verification of installation; and
- (3) an interest rate sufficient to pay the financing costs of the program, including the issuance of bonds and any financing delinquencies.

**Subd. 4. Qualifying Residential Property Programs Eligible Measures.**

- (a) A program administrator shall establish, maintain, and make publicly available an eligible measures list of energy improvements that has been approved by the implementing entity, and shall establish reasonable procedures for the inclusion, maintenance, and removal of information included on the eligible measures list. The eligible measures list shall, at a minimum, include the following information for each measure appearing on that list:

1. A name or description of the measure.
  2. Eligibility criteria, including performance thresholds, certification requirements, and installation criteria.
  3. Expected useful life. The program administrator shall determine useful life for purposes of this subsection based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognizes standards and testing organizations.
  4. An improvement shall not be included on an eligible measures list unless the program administrator has determined that the measure meets one or more standards or certification criteria that have been established by appropriate government agencies, such as the United States Department of Energy, the United States Environmental Protection Agency, or by credible third-party private organizations that publish generally acceptable standards with respect to the measure.
  5. A program administrator may offer energy improvements not included in the eligible measures list if that administrator does both of the following:
    - i. Establishes, maintains and make publicly available an application process, that has been approved by the local government, to permit a contractor or property owner to request a energy improvement assessment for a custom measure.
    - ii. Establishes, maintains, and makes publicly available, guidelines that have been approved by the local government by which the program administrator shall review and approve the application for a custom measure. Those guidelines shall identify minimum requirements and criteria that must be met in order for a custom measure to be approved.
- (b) Ancillary work may be included in a financing agreement for energy improvements only if the scope of the ancillary work is directly related to and necessary for the installation and safe operation of an eligible measure.
- (c) Any eligible measure or ancillary work financed under an energy improvements program shall be affixed to a building or other part of the property and shall constitute an improvement to the property.

**Subd. 5. Financing Requirements for Qualifying Residential Property Programs.** A program administrator operating under an implementing entity shall be required to:

(a) A program administrator shall not submit for recordation by a local government any financing agreement unless the following criteria are satisfied:

1. All property taxes for the property that will be subject to the financing agreement are current. The program administrator shall ask the property owner whether there has been no more than one late payment of property taxes on the property for the previous three years or since the current owner acquired the property, whichever period is shorter.
2. The property that will be subject to the financing agreement has no recorded and outstanding involuntary liens in excess of one thousand dollars (\$1,000).
3. The property that will be subject to the financing agreement has no notices of default currently recorded which have not been rescinded.
4. The property owner has not been subject to any bankruptcy proceedings within the last seven years, except that the property owner may have been subject to a bankruptcy proceeding that was discharged or dismissed more than two years before the application date and the property owner has had no payments more than 30 days past due on any mortgage debt or nonmortgage debt, excluding debt incurred in connection with medical expenses, during the 12 months immediately preceding the application date.
5. The property owner is current on all mortgage debt on the subject property and has no more than one late payment exceeding 30 days past due during the 12 months immediately preceding the application date.
6. The property that will be subject to the financing agreement is within the jurisdiction of the implementing entity.
7. The financing does not exceed 20 percent of the market value of the property, inclusive of existing recorded assessments.
8. The total balance of energy improvement assessments and mortgage-related debt recorded against the property subject to the energy improvement assessment does not exceed 97 percent of the fair market value of the property as established by the valuation required herein.
9. The term of the energy improvement assessment shall not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the financing agreement is attributable. For the purposes of this subsection, the program administrator shall determine useful life based upon credible third-party standards or certification criteria that have been

established by appropriate government agencies or nationally recognized standards and testing organizations.

10. The program administrator shall require a property owner to disclose whether additional energy improvement assessments that have not been recorded have been authorized by any property owner to be placed on the same subject property. The failure of a property owner to comply with this subdivision shall not invalidate an assessment contract or any obligations thereunder.

11. The program administrator shall use commercially reasonable methods to verify the above, if applicable, to the extent such methods are reasonably available.

(b) A program administrator shall derive market value using one of the following:

1. An automated valuation model, using the following criteria:

- a. The automated valuation model must be provided by a third-party vendor.
- b. The automated valuation model must have estimation models with confidence scores and periodic statistical calibration by the third-party vendor.
- c. The program administrator must request at least three automated valuation models for each property. The estimated value for each model shall be the average between the high and low values, if a range is provided.
- d. The program administrator shall utilize the estimated value with the highest confidence score for a property. If an automated valuation model meeting the criteria of subparagraphs a., b., and c. does not return a confidence score for a subject property, the program administrator shall utilize the average of all estimated values that have been returned.

2. The assessed value of the real property on which the improvements are to be installed.

(c) The market value determination by the program administrator shall be disclosed to the property owner prior to signing the financing agreement.

(d) A program administrator shall determine, prior to recordation of a energy improvement financing agreement, that the property owner has a reasonable ability to pay the annual payment obligation for the energy improvement assessment based on the property owner income, assets, and current debt obligations. The determination process shall be based on the following factors:

1. At least one property owner shall submit on his or her application his or her monthly income and monthly housing expenses.

2. Housing expenses shall include all mortgage principal and interest payments, insurance, property taxes, mortgage guaranty insurance, and other preexisting fees and assessments on the property. Household income may include the income of any persons 18 or older who are on title to the property. For any person whose income is considered, his or her debt obligations must also be considered pursuant to the provisions of this section. The program administrator shall not be required to consider more income than is necessary, or verify assets if verified income is sufficient to determine the ability to pay the annual payment obligation.
  3. Debt obligations in accordance with subsection (f).
  4. The equity of the property securing the assessment shall not be considered in a calculation of ability to pay.
- (e) The program administrator shall determine and consider the current or reasonably expected income or assets of the property owner that the program administrator relies upon in order to determine a property owner's ability to pay the annual payment obligation for the energy improvements assessment using reasonably reliable third-party records of the property owner's income or assets. The program administrator may use automated verification provided the source of that verification is specific to the income of the property owner and not based on predictive or estimation methodologies, and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator. Examples of records the program administrator may use to verify the property owner's income or assets include, but are not limited to:
1. A pay stub issued within the last 30 days or financial institution records showing deposit activity within the last 60 days.
  2. Copies of tax returns the property owner filed with the Internal Revenue Service or the Franchise Tax Board.
  3. Internal Revenue Service Form W-2 (Wage and Tax Statement), or other similar Internal Revenue Service forms that are used for reporting wages or tax withholding.
  4. Payroll statements, including the Department of Defense Leave and Earnings Statement (LES).
  5. Financial institution records, such as bank statements or investment account statements reflecting the value of particular assets.
  6. Records from the property owner's employer or third party that obtained income information from the employer.
  7. Records from a federal, state, or local government agency stating the property owner's income, including benefits or entitlements.



- (f) A program administrator shall consider the monthly debt obligations of the property owner to determine a property owner's ability to pay the annual obligation of the qualifying improvements assessment using reasonably reliable third-party records, including one or more consumer credit reports from agencies that meet the requirements of Section 1681a(p) of Title 15 of the United States Code. For purposes of this subsection, monthly debt obligations means:
1. All secured and unsecured debt reflected in the consumer credit reports obtained by the program administrator.
  2. Monthly housing expenses.
  3. Any stated alimony or child support obligations.
- (g) In calculating the ability of the property owner to pay the annual obligation, the program administrator shall determine that the property owner's income is sufficient to meet:
1. The annual energy improvement assessment obligation.
  2. Any mortgage payments, as defined by the higher of the borrowers self-reported housing expenses or the mortgage payments identified in the consumer credit reports obtained by the program administrator.
  3. All other existing debts and obligations identified in subdivision (f).
  4. Sufficient residual income to meet basic household living expenses. A program administrator may make reasonable estimation of basic living expenses based on the number of persons in the household.
- (h) In the case of emergency or immediate necessity, the requirements of subsection 5(e) may be waived for the funding and recordation of a qualifying improvements assessment to finance a heating, ventilation, and air conditioning (HVAC) system, boiler, or other system whose primary function is temperature regulation in a home if all of the following are met:
1. The program administrator first attempted to use an automated means of verification as described in subdivision 5(e).
  2. If the program administrator was unable to verify the property owner's income pursuant to subdivision 5(e), the program administrator may rely on the stated income of the property owner.
  3. The funding is limited to the emergency or immediate necessity energy program improvement and any required ancillary work necessary to the installation and safe operation of the energy program improvement.

4. The property owner executes a waiver of their right to cancel pursuant to, and confirms the emergency or immediate necessity of the eligible measure.
  5. The amount of the financing agreement does not exceed fifteen thousand dollars (\$15,000) or a monthly equivalent payment on the energy improvement program assessment of \$125.00, both indexed for inflation, whichever is greater.
- (i) If the determination of a property owner's ability to pay an annual payment obligation is lower than the actual annual energy improvement payment obligation under an energy improvement assessment, and the consumer is obligated under a home improvement contract directly related to such an assessment, the program administrator shall be responsible for the difference, unless such determination was based upon any misrepresentation by any property owner.
  - (j) An implementing entity may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this section shall be recorded in the public records of the county within which the property is located within 5 days after execution of the agreement. An agreement, including supporting documents and disclosures, entered into pursuant to this section, does not need to be notarized.

**Subd. 6. Qualifying Residential Property Program Disclosure, Right to Cancel, and Contractor Requirements.**

**A. Oral Confirmation of Terms.**

1. Before a property owner executes an energy improvement assessment contract, a program administrator operating under an implementing entity shall:
  - a. Provide a copy of the energy improvement assessment contract.
  - b. Make an oral confirmation of the key terms of the assessment contract, in plain language, with the property owner on the call or verified authorized representative of the owner on the call and shall obtain acknowledgment from the property owner on the call to whom the oral confirmation is given.
  - c. Record the oral confirmation in an audio format in accordance with applicable laws, to be maintained for five years. The program administrator may not comply with this requirement through the use of a prerecorded message, or other similar device or method.
  - d. The program administrator shall develop additional procedures to address the needs and concerns of elders, to be approved by the implementing entity.
2. Such oral confirmation shall include, but is not limited to, the following information:
  - a. The eligible measure is being funded by an assessment.

- b. The total estimated amount the property owner will have to pay under the energy improvement assessment contract, including applicable fees.
  - c. The estimated date that the first payment will be due.
  - d. The term of the assessment contract.
  - e. That payments on the energy improvement assessment contract will be collected along with the property taxes.
  - f. That the property will be subject to a lien during the term of the energy improvement assessment contract.
  - g. That the property owner has disclosed whether additional energy improvement assessments have been authorized by any property owner to be placed on the property.
  - h. That such property owner understands and affirms the financial information that he or she has provided, and that he or she has the financial means to make payments on the financing agreement in addition to his or her other expenses.
  - i. That any potential utility savings are not guaranteed, and will not reduce the non-ad valorem assessment payments or total assessment amount.
  - j. That the program administrator and contractor do not provide tax advice, and that the property owner should seek professional tax advice if he or she has questions regarding the tax impact of the non-ad valorem assessment or energy improvements assessment contract.
  - k. That the obligations under the energy improvement assessment contract may be required to be paid in full before the property owner sells or refinances the property.
  - l. That the property owner may be subject to penalties in the event of a delinquency or default.
3. At the commencement of the oral confirmation, the program administrator shall ask if the property owner on the call would prefer to communicate during the oral confirmation primarily in a language other than English. If the preferred language is supported by the program administrator, the oral confirmation shall be given in that primary language, except where the property owner on the call chooses to communicate through his or her own interpreter. If the preferred language is not supported and an interpreter is not chosen by the property owner on the call, the financing agreement may not proceed. For the purposes of this section, “his or her own interpreter” means a person, not a minor, able to speak fluently and read with full understanding both the English language and any of the languages specified in this section and who is not employed by, and whose services are not made available through, the program administrator, the

public agency or the contractor, excepting entities or individuals certified or approved by a local government for translation services in the preferred language.

4. Beginning on July 1, 2019, if the oral confirmation was conducted primarily in a language other than English, the program administrator shall deliver, in writing, the financing agreement, disclosure form, and right to cancel form in the language in which the oral confirmation was conducted, that includes a translation of every term and condition in that contract or agreement.

B. Every implementing entity that offers qualifying improvements under this section shall be required to develop a disclosure form for homeowners that shall disclose all key financing terms of the financing agreement including, but not limited to:

1. The total amount funded, including the cost of the installed improvements together with program fees and capitalized interest, if any;
2. The annual tax obligation;
3. The annual payment amounts;
4. The term of the assessment;
5. The stated rate of interest;
6. The annual percentage rate;
7. A payment schedule;
8. The improvements to be installed;
9. That if the property owner sells or refinances their property, they may be required to pay off the assessment as a condition of sale or refinance;
10. That no penalty shall be assessed or collected for prepayment of the assessment;
11. That any potential utility savings are not guaranteed, and will not reduce the assessment payments or total assessment amount;
12. That the assessment will be collected along with their property taxes and will result in a lien on their property;
13. That the payments will be added to his or her property tax bill.
14. That failure to pay the assessment may result in penalties and fees, and could result in the property owner losing their home.
15. That the property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or of the tax impact on the assessment or financing agreement.

C. A program administrator shall present the disclosure form to a property owner for acknowledgment prior to the execution of a financing agreement.

D. Right to Cancel.

1. A program administrator shall be required, as a part of its financing agreement, to provide a 3 day right to cancel the energy improvements financing. The 3 day right expires on or before midnight of the third business day after a property owner signs the financing agreement. A program administrator shall be required to provide a printed form for the right to cancel that is presented to the property owner no later than the time of signing of the financing agreement.
2. The implementing entity shall develop a form to notify the property owner in writing and to include in the call procedure contained herein, that such owner may rescind any financing agreement entered into pursuant to this section not later than three business days after entering into such agreement. All program administrators shall be required to provide the form at the same time as the disclosure form above. The notification shall be provided to the property owner as a printed copy unless the property owner agrees to an electronic copy.

E. Right to Cancel Tied to Home Improvement Contract.

3. A contractor shall not commence work, and the home improvement contract shall be unenforceable, if both of the following occur:
  - a. The property owner entered into the home improvement contract concurrently with the energy improvement assessment contract, and based on the reasonable belief that the work would be covered by the energy improvements program.
  - b. The property owner applies for, accepts, and cancels the qualifying improvements financing within the right to cancel period set forth in this section.
4. If work has commenced in violation of this section, then:
  - a. The contractor is entitled to no compensation for that work.
  - b. The contractor shall restore the property to its original condition at no cost to the property owner.
  - c. The contractor shall immediately and without condition return all money, property, and other consideration given by the property owner. If the property owner gave any property as consideration and the contractor does not or cannot return it for whatever reason, the contractor shall immediately return the fair market value of the property or its value as designated in the contract, whichever is greater.
5. If the contractor has delivered any property to the property owner pursuant to a contract that is unenforceable under this section, the property owner shall make the property available to the contractor for return within 90 days of execution of the contract, provided that:

- a. The provisions of subsection (4) have been met.
  - b. The property can be practically returned to the contractor and removed, at the contractor's expense, without leaving any damage to the property owner's property.
6. Failure of the contractor to comply with this section shall allow the property owner to retain without obligation in law or equity any property provided pursuant to the unenforceable contract.
- F. Waiver of Right to Cancel.
- 1. The property owner may waive the right to cancel if all of the following are met:
    - a. The contract is executed in connection with the making of emergency or immediately necessary repairs to protect persons or real or personal property.
    - b. The property owner initiated the contract for the emergency repair or immediately necessary repair.
    - c. The property owner provides a separate statement that is handwritten in ink by a property owner and dated and signed by each property owner, describing the situation that requires immediate remedy, and expressly acknowledges that the contractor has informed them of his or her right to cancel and that he or she waives the right to cancel the sale.
  - 2. If the property owner waives his or her right to cancel on the home improvement contract to allow the home improvement contractor to proceed with installation, and then cancels his or her energy improvements program financing, it shall not invalidate the home improvement contract.
- G. Contractor Requirements.
- 1. A program administrator shall not permit contractors or other third parties to advertise the availability of financing agreements that are administered by the program administrator, or to solicit property owners on behalf of the program administrator, unless both of the following requirements are met:
    - a. The contractor maintains a license in good standing with the Department of Labor and Industry, as required under Minnesota law, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates, and maintains the required bond and insurance coverage pursuant thereto.
    - b. The program administrator obtains the contractor's written agreement that the contractor or third party will act in accordance with applicable advertising and marketing laws and regulations, and all other applicable laws.
  - 2. A program administrator shall not provide any direct or indirect cash payment or other thing of material value to a contractor in excess of the actual price charged by that contractor to the

property owner for the sale and installation of one or more efficiency improvements financed by a financing agreement. This shall not apply to any communication between a program administrator and a contractor, or any information disclosed by or to a program administrator, and any service provided by a program administrator to a contractor, for the purpose of enabling or facilitating the installation of efficiency improvements for an application or prospective application for energy improvements financing.

3. A program administrator is not permitted to reimburse expenses to a contractor for advertising and marketing campaigns and collateral. The reimbursement of a contractor's bona fide and reasonable training expenses related to energy improvement financing is permitted, provided that such training expenses are actually incurred by the contractor; such reimbursement shall not exceed one hundred dollars per each salesperson or agent of the contractor who participated in such training, and shall be paid directly to the contractor, not its salespersons or agents.
4. A program administrator shall not provide any direct cash payment or other thing of value to a property owner explicitly conditioned upon that property owner entering into a financing agreement. Notwithstanding the above, programs or promotions that offer reduced fees or interest rates to property owners are neither a direct cash payment or "other thing of value", provided that the reduced fee or interest rate is reflected in the financing agreement and in no circumstance provided to the property owner as cash consideration.
5. A program administrator, contractor, or third party shall not make any representation as to the tax deductibility of a financing agreement unless that representation is consistent with the representations, statements, or opinions of the Internal Revenue Service or the Department of Revenue with regard to the tax treatment of non-ad valorem assessments.
6. At the time of sale, a program administrator shall not provide to a contractor engaged in soliciting financing agreements on its behalf any information that discloses the amount of funds for which a property owner is eligible for qualifying improvements of the amount of equity in a property.
7. A contractor shall not provide a different price for a project financing under this section than the contractor would provide if paid in cash by the property owner.

**Subd. 7. Qualifying Residential Property Program Reporting Requirements.**

- (a) An implementing entity offering energy improvements shall, on an annual basis, make publicly available a report that shall contain the following information, along with all methodologies and supporting assumptions or sources relied upon in preparing the report.

1. The number of energy improvements assessments funded by city, county, and zip code.
  2. The aggregate dollar amount of energy improvements assessments funded by city, county, and zip code.
  3. The average dollar amount of energy improvements assessments funded by city, county, and zip code.
  4. The categories of installed measures whether energy efficiency, renewable energy, flood mitigation, and disaster resiliency, and the percentage of qualifying improvements assessments represented by each category type, on a number and dollar basis, by city, county, and zip code.
  5. The number of defaulted assessments.
  6. For each defaulted assessment:
    - i. The total defaulted amount.
    - ii. The number and dates of missed payments.
    - iii. City, county, and zip code in which the underlying property is located.
  7. The percentage the defaults represent of the total assessments within each zip code.
  8. The total number of parcels defaulted and the number of years in default for each property.
  9. Estimated total amount of energy saved, and the estimated total dollar amount of such savings by property owners by measures installed in the calendar year, by city, county, and zip code. In addition, report the total number of energy savings improvements, and number of improvements installed that meet standards of the Energy Star program of the U.S. Environmental Protection Agency, including the overall average efficiency rating of installed units for each product type.
  10. Estimated total amount of renewable energy produced by measures installed in the calendar year, by city, county, and zip code. In addition, report the total number of renewable energy installations, including the average and median system size.
  11. Estimated amount of greenhouse gas emissions reductions.
  12. Estimated number of jobs created.
  13. The average and median amount of annual and total energy improvement assessments based on city, county, and zip code.
  14. The number and percentage of homeowners over 60 years old by city, county, and zip code.
- (b) All reports made publicly available pursuant to this subdivision shall include only aggregate data, and shall not include any nonpublic personal information.



(c) The implementing entity shall make the data publicly available on their website.

Subd. ~~38~~. **Retail and end use prohibited.** Energy generated by an energy improvement may not be sold, transmitted, or distributed at retail and may not provide for end use of the electrical energy from an off-site facility. On-site generation is allowed to the extent provided for in section 216B.1611.

This section does not modify the exclusive service territories or exclusive right to serve as provided in sections 216B.37 to 216B.43.

~~Subd. 4. **Financing terms.** Financing provided under this section must have:~~

- ~~(1) a cost-weighted average maturity not exceeding the useful life of the energy improvements installed, as determined by the implementing entity, but in no event may a term exceed 20 years;~~
- ~~(2) a principal amount not to exceed the lesser of 20 percent of the assessed value of the real property on which the improvements are to be installed, or the actual cost of installing the energy improvements, including the costs of necessary equipment, materials, and labor, the costs of each related energy audit or renewable energy system feasibility study, and the cost of verification of installation; and~~
- ~~(3) an interest rate sufficient to pay the financing costs of the program, including the issuance of bonds and any financing delinquencies.~~

Subd. ~~59~~. **Coordination with other programs.** A financing program must include cooperation and coordination with the conservation improvement activities of the utility serving the qualifying real property and other public and private energy improvement programs.

Subd. ~~610~~. **Certificate of participation.** Upon completion of a project, an implementing entity shall provide a borrower with a certificate stating participation in the program and what energy improvements have been made with financing program proceeds.

Subd. ~~711~~. **Repayment.** An implementing entity that finances an energy improvement under this section must:

- (1) secure payment with a lien against the qualifying real property; and
- (2) collect repayments as a special assessment as provided for in section 429.101 or by charter, provided that special assessments may be made payable in up to 20 equal annual installments.

If the implementing entity is an authority, the local government that authorized the authority to act as implementing entity shall impose and collect special assessments necessary to pay debt service on bonds issued by the implementing entity under subdivision 8, and shall transfer all collections of the assessments upon receipt to the authority.

**Subd. 812. Bond issuance; repayment.** (a) An implementing entity may issue revenue bonds as provided in chapter 475 for the purposes of this section, provided the revenue bond must not be payable more than 20 years from the date of issuance.

(b) The bonds must be payable as to both principal and interest solely from the revenues from the assessments established in subdivision 7.

(c) No holder of bonds issued under this subdivision may compel any exercise of the taxing power of the implementing entity that issued the bonds to pay principal or interest on the bonds, and if the implementing entity is an authority, no holder of the bonds may compel any exercise of the taxing power of the local government. Bonds issued under this subdivision are not a debt or obligation of the issuer or any local government that issued them, nor is the payment of the bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

**Subd. 913. Supplemental funding sources.** (a) An implementing entity is authorized to establish, acquire, and use additional or alternative funding sources for the purposes of this section.

(b) For the purposes of this subdivision, additional or alternative funding sources do not include issuance of general obligation bonds.

## Appendix B

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### Coalition Draft PACE Consumer Protection Bill

Section 1. Minnesota Statutes 2017, section 45.011, subdivision 1, is amended to read:

Subdivision 1. **Scope.** As used in chapters 45 to 80C, 80E to 83, 155A, 332, 332A, 332B, 345, and 359, and sections 123A.21, subdivision 7, paragraph (a), clause (23); 123A.25; 216C.437; 325D.30 to 325D.42; 326B.802 to 326B.885; 386.62 to 386.78; 471.617; and 471.982, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 2. Minnesota Statutes 2017, section 46.04, subdivision 1, is amended to read:

Subdivision 1. **General.** The commissioner of commerce, referred to as the commissioner in chapters 46 to 59A, 332A, and 332B, and in section 216C.437 as the commissioner, is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, chapter 201, were conferred by law upon the public examiner, and shall take over all duties in relation to state banks, savings banks, trust companies, savings associations, and other financial institutions within the state which, prior to the enactment of chapter 201, were imposed upon the public examiner. The commissioner of commerce shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, savings associations, credit unions, industrial loan and thrift companies, and other financial institutions doing business within this state; and shall, through examiners, examine each financial institution at least once every 24 calendar months. In satisfying this examination requirement, the commissioner may accept reports of examination prepared by a federal agency having comparable supervisory powers and examination procedures. With the exception of industrial loan and thrift companies which do not have deposit liabilities and licensed regulated lenders, it shall be the principal purpose of these examinations to inspect and verify the assets and liabilities of each and so far investigate the character and value of the assets of each institution as to determine with reasonable certainty that the values are correctly carried on its books. Assets and liabilities shall be verified in accordance with methods of procedure which the commissioner may determine to be adequate to carry out the intentions of this section. It shall be the further purpose of these examinations to assess the adequacy of capital protection and the capacity of the institution to meet usual and reasonably anticipated deposit withdrawals and other cash commitments without resorting to excessive borrowing or sale of assets at a significant loss, and to investigate each institution's compliance with applicable laws and rules.

Based on the examination findings, the commissioner shall make a determination as to whether the institution is being operated in a safe and sound manner. None of the above provisions limits the commissioner in making additional examinations as deemed necessary or advisable. The commissioner shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. The commissioner may make requirements as to records as deemed necessary to facilitate the carrying out of the commissioner's duties and to properly protect the public interest. The commissioner may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to official duties, the commissioner of commerce has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state, and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make returns and reports to the commissioner of commerce as the commissioner may require; attend and answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and property as the commissioner may desire to inspect, and in all things aid the commissioner in the performance of duties.

Sec. 3. Minnesota Statutes 2017, section 216C.435, subdivision 1, is amended to read:

Subdivision 1. **Scope.** For the purposes of this section, ~~and section [216C.436](#), and section [216C.437](#),~~ the terms defined in this section have the meanings given them.

Sec. 4. Minnesota Statutes 2017, section 216C.435, subdivision 2, is amended to read:

Subd. 2. **Authority.** "Authority" means a housing and redevelopment authority or economic development authority created pursuant to section [469.003](#), [469.004](#), or [469.091](#), a port authority pursuant to section [469.049](#), [469.1082](#), or special law, or another entity authorized by law to exercise the powers of an authority created pursuant to one of those sections. "Authority" does not include a Residential PACE administrator.

Sec. 5. Minnesota Statutes 2017, section 216C.435, subdivision 3b, is amended to read:

Subd. 3b. **Cost-effective energy improvements.** "Cost-effective energy improvements" mean ~~energy improvements~~

(1) any renovation or retrofitting:

(i) of qualifying commercial real property to improve energy efficiency that is permanently affixed to the property, that results in a net reduction in energy consumption without altering the principal source of energy, and that has been identified in an energy audit as repaying their purchase and installation costs in 20 years or less, based on the amount of future energy saved and estimated future energy prices;

(ii) of qualifying residential real property that is permanently affixed to the property and is eligible to receive an incentive through a program offered by the electric or natural gas utility that provides service under section 216B.241 to the property; or

(2) permanent installation of new or upgraded electrical circuits and related equipment to enable electrical vehicle charging; or

(3) a renewable energy system attached to, installed within, or proximate to a building that generates electrical or thermal energy from a renewable energy source that have been identified in an energy audit or renewable energy system feasibility study as repaying their purchase and installation costs in 20 years or less, based on the amount of future energy saved and estimated future energy prices.

Sec. 6. Minnesota Statutes 2017, section 216C.435, subdivision 1, is amended by adding a subdivision to read:

Subd. 3b. **Commercial PACE loan program.** "Commercial PACE loan program" means the financing program established under section 216C.436.

Sec. 7. Minnesota Statutes 2017, section 216C.435, subdivision 1, is amended by adding a subdivision to read:

Subd. 3c. **Commissioner.** "Commissioner" means the commissioner of commerce.

Sec. 8. Minnesota Statutes 2017, section 216C.435, subdivision 5, is amended to read:

Subd. 5. ~~**Energy improvement Homeowner.**~~ "Energy improvement" means:

~~(1) any renovation or retrofitting of a building to improve energy efficiency that is permanently affixed to the property and that results in a net reduction in energy consumption without altering the principal source of energy;~~

~~(2) permanent installation of new or upgraded electrical circuits and related equipment to enable electrical vehicle charging; or~~

~~(3) a renewable energy system attached to, installed within, or proximate to a building that generates electrical or thermal energy from a renewable energy source~~ “Homeowner” means an owner of qualifying residential real property. “Homeowner” includes all the persons on the deed having a legal interest in the property and all persons on the mortgage or note.

Sec. 9. Minnesota Statutes 2017, section 216C.435, subdivision 6, is amended to read:

Subd. 6. **Implementing entity.** "Implementing entity" means the local government or an authority designated by the local government by resolution to implement and administer programs described in section 216C.436 and 216C.437. “Implementing entity” does not include a Residential PACE administrator.

Sec. 10. Minnesota Statutes 2017, section 216C.435, is amended by adding a subdivision to read:

Subd. 7b. **PACE.** “PACE” means property assessed clean energy.

Sec. 11. Minnesota Statutes 2017, section 216C.435, subdivision 8, is amended to read:

Subd. 8. **Qualifying commercial real property.** "Qualifying commercial real property" means a ~~single-family or~~ multifamily residential dwelling, or a commercial or industrial building, that the implementing entity has determined, after review of an energy audit or renewable energy system feasibility study, can be benefited by installation of cost-effective energy improvements.

Sec. 12. Minnesota Statutes 2017, section 216C.435, is amended by adding a subdivision to read:

Subd. 8a. **Qualifying residential real property.** "Qualifying residential real property" means a single-family residential dwelling, or other residential dwelling of four or fewer units, that the implementing entity has determined can be benefited by installation of cost-effective energy improvements.

Sec. 13. Minnesota Statutes 2017, section 216C.435 is amended by adding a subdivision to read:

Subd. 10a. **Residential PACE administrator.** “Residential PACE administrator” means an entity with which the implementing entity contracts to administer all or part of a Residential PACE loan program. For the purposes of this subdivision, “administer” includes but is not limited to the performance of any or all of the following acts, whether directly or through an agent:

(1) marketing, offering, selling, facilitating, or, in whole or in part, financing a Residential PACE loan; or

(2) facilitating, arranging, or contracting for the installation of the cost-effective energy improvements financed through a Residential PACE loan; or

(3) offering any other service to an implementing entity in connection with the offering or provision of a Residential PACE loan or operating a Residential PACE program.

Sec. 14. Minnesota Statutes 2017, section 216C.435 is amended by adding a subdivision to read:

Subd. 10b. **Residential PACE lien.** “Residential PACE lien” means the encumbrance on the qualifying residential real property created by the special assessment as provided section 216C.437, subdivision 22.

Sec. 15. Minnesota Statutes 2017, section 216C.435 is amended by adding a subdivision to read:

Subd. 10c. **Residential PACE loan.** “Residential PACE loan” means the extension of financing, which is offered to pay for the installation of cost-effective energy improvements in a homeowner’s qualifying residential real property and is repayable by the homeowner through a special assessment as provided under section 216C.437, subdivision 22.

Sec. 16. Minnesota Statutes 2017, section 216C.435 is amended by adding a subdivision to read:

Subd. 10d. **Residential PACE loan contract.** “Residential PACE loan contract” means the legal agreement for the financing and installation of cost-effective energy improvements under the Residential PACE program.

Sec. 17. Minnesota Statutes 2017, section 216C.435 is amended by adding a subdivision to read:

Subd. 10e. **Residential PACE loan contractor.** “Residential PACE loan contractor” means a person or entity that installs cost-effective energy improvements financed, in whole or in part, by a PACE loan.

Sec. 18. Minnesota Statutes 2017, section 216C.435 is amended by adding a subdivision to read:

Subd. 10f. **Residential PACE loan program.** “Residential PACE loan program” means the financing program established under section 216C.437.

Sec. 19. Minnesota Statutes 2017, section 216C.435 is amended by adding a subdivision to read:

Subd. 14. **Vulnerable adult.** “Vulnerable adult” means any person 18 years of age or older who:

(i) receives services from a home care provider required to be licensed under sections 144A.43 to 144A.482; or from a person or organization that offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under section 256B.0625, subdivision 19a, 256B.0651, 256B.0653, 256B.0654, 256B.0659, or 256B.85;

(ii) possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision;

(iii) possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the individual's ability to knowingly contract or otherwise to protect the individual's own self-interest; or

(iv) identifies as having dementia or Alzheimer's or who exhibits behaviors that a reasonable person would suspect indicates the adult has Alzheimer's disease or other dementia.

Sec. 20. Minnesota Statutes 2016, section 216C.436, subdivision 1, is amended by to read:

Subdivision 1. **Program purpose and authority.** An implementing entity may establish a Commercial PACE loan program to finance cost-effective energy improvements to enable owners of qualifying commercial real property to pay for the cost-effective energy improvements to the qualifying real property with the net proceeds and interest earnings of revenue bonds authorized in this section. An implementing entity may limit the number of qualifying commercial real properties for which a property owner may receive program financing. The program must serve a public purpose and not primarily be for the benefit of private entities or private investors even though such private benefit may incidentally result.

Sec. 21. Minnesota Statutes 2016, section 216C.436, subdivision 1, is amended by adding a subdivision to read:

Subd. 1a. **Scope.** Unless otherwise specified, this section applies only to programs established under subdivision 1 that are offered to an owner of qualifying commercial property.

Sec. 22. Minnesota Statutes 2016, section 216C.436, subdivision 2, is amended by adding a subdivision to read:

**Subd. 2. Program requirements.** A Commercial PACE loan financing program must:

- (1) impose requirements and conditions on financing arrangements to ensure timely repayment;
- (2) require an energy audit or renewable energy system feasibility study to be conducted on the qualifying commercial real property and reviewed by the implementing entity prior to approval of the financing;
- (3) require the inspection of all installations and a performance verification of at least ten percent of the cost-effective energy improvements financed by the program;
- (4) not prohibit the financing of all cost-effective energy improvements not otherwise prohibited by this section;



(5) require that all cost-effective energy improvements be made to a qualifying commercial real property prior to, or in conjunction with, an applicant's repayment of financing for cost-effective energy improvements for that property;

(6) have cost-effective energy improvements financed by the program performed by licensed contractors as required by chapter 326B or other law or ordinance;

(7) require disclosures to borrowers by the implementing entity of the risks involved in borrowing, including the risk of foreclosure if a tax delinquency results from a default;

(8) provide financing only to those who demonstrate an ability to repay;

(9) not provide financing for a qualifying commercial real property in which the owner is not current on mortgage or real property tax payments;

(10) require a petition to the implementing entity by all owners of the qualifying commercial real property requesting collections of repayments as a special assessment under section [429.101](#);

(11) provide that payments and assessments are not accelerated due to a default and that a tax delinquency exists only for assessments not paid when due; and

(12) require that liability for special assessments related to the financing runs with the qualifying commercial real property.

Sec. 23. Minnesota Statutes 2016, section 216C.436, subdivision 5, is amended by adding a subdivision to read:

Subd. 5. **Coordination with other programs.** A Commercial PACE loan financing program must include cooperation and coordination with the conservation improvement activities of the utility serving the qualifying commercial real property under section 216B.241 and other public and private energy improvement programs.

Sec. 24. Minnesota Statutes 2016, section 216C.436, subdivision 7, is amended by adding a subdivision to read:

Subd. 7. **Repayment.** An implementing entity that finances an energy improvement under this section must:

(1) secure payment with a lien against the qualifying commercial real property; and

(2) collect repayments as a special assessment as provided for in section 429.101 or by charter, provided that special assessments may be made payable in up to 20 equal annual installments.

If the implementing entity is an authority, the local government that authorized the authority to act as implementing entity shall impose and collect special assessments necessary to pay debt service on bonds issued by the implementing entity under subdivision 8, and shall transfer all collections of the assessments upon receipt to the authority.

Sec. 25. Minnesota Statutes 2016, section 216C.436, subdivision 8, is amended by adding a subdivision to read:

Subd. 8. **Bond issuance; repayment.** (a) An implementing entity may issue revenue bonds as provided in chapter 475 for the purposes of this section and section 216C.437, provided the revenue bond must not be payable more than 20 years from the date of issuance.

(b) The bonds must be payable as to both principal and interest solely from the revenues from the assessments established in subdivision 7 of this section and in section 216C.437, subdivision 22.

(c) No holder of bonds issued under this subdivision may compel any exercise of the taxing power of the implementing entity that issued the bonds to pay principal or interest on the bonds, and if the implementing entity is an authority, no holder of the bonds may compel any exercise of the taxing power of the local government. Bonds issued under this subdivision are not a debt or obligation of the issuer or any local government that issued them, nor is the payment of the bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

Sec. 26. Minnesota Statutes 2016, section 216C.436, subdivision 9, is amended by adding a subdivision to read:

Subd. 9. **Supplemental funding sources.** (a) An implementing entity is authorized to establish, acquire, and use additional or alternative funding sources for the purposes of this section and section 216C.437.

(b) For the purposes of this subdivision and section 216C.437, additional or alternative funding sources do not include issuance of general obligation bonds.

Sec. 27. **[216C.437]. RESIDENTIAL PACE LOAN PROGRAM; AUTHORITY; CONSUMER PROTECTIONS.**

Subdivision 1. Scope. This section applies only to programs established under subdivision 2 that are offered to a homeowner.

Subd. 2. Program purpose and authority. (a) An implementing entity may establish a Residential PACE loan program to finance cost-effective energy improvements to enable homeowners to pay for the cost-effective energy improvements to qualifying residential real property with the net proceeds and interest earnings of revenue bonds authorized in section 216B.436, subdivision 8. The program must serve a public purpose and not primarily be for the benefit of private entities or private investors even though such private benefit may incidentally result.

(b) An implementing entity may limit the number of qualifying residential real properties for which a homeowner may receive program financing.

(c) No implementing entity or Residential PACE administrator may:

(1) provide, offer, or facilitate financing to a homeowner who is not current on mortgage or real property tax payments; or

(2) permit a homeowner to have more than one Residential PACE loan outstanding at a time or a combination of a Residential PACE loan and one or more other loan products offered by the administrator or any affiliate or related entity of the administrator.

(d) Upon completion of a project, an implementing entity shall provide a homeowner with a certificate stating participation in the program and what cost-effective energy improvements have been made with financing program proceeds.

**Subd. 3. Financing terms.** (a) An implementing entity shall ensure that financing provided under this section must have:

(1) a cost-weighted average maturity not exceeding the useful life of the cost-effective energy improvements installed, as determined by the commissioner, but in no event may a term exceed 20 years; and

(2) a principal amount not to exceed:

(i) for a Residential PACE loan for energy efficiency improvements only, the lesser of 10 percent of the assessed value of the real property on which the improvements are to be installed or the actual cost of installing the cost-effective energy improvements; and

(ii) for a Residential PACE loan for a renewable energy system or a combination of a renewable energy system and energy efficiency improvements, the lesser of 20 percent of the assessed value of the real property on which the improvements are to be installed or the actual cost of installing the cost-effective energy improvements.

For the purposes of this clause, the “actual cost of installing cost-effective energy improvements” includes the costs of necessary equipment, materials and labor, and the cost of verification of installation.

(b) The combined debt of existing mortgages, the Residential PACE lien, and all other liens on the qualified residential real property may not exceed 90% of the assessed value of the real property.

**Subd. 4. PACE lien position.** (a) Notwithstanding any statute or ordinance to the contrary, a Residential PACE lien shall be:

(1) subordinate to all liens on the qualifying residential real property recorded prior to the time the PACE lien is recorded;

(2) subordinate to a first mortgage or deed of trust on the qualifying property recorded after the PACE lien is recorded; and

(3) superior to any lien on the qualifying residential real property recorded after the PACE lien is recorded.

(b) Notwithstanding any other law to the contrary, in the event of a foreclosure sale or a sale pursuant to the exercise of a power of sale under a deed of trust relating to a qualifying residential real property, the holders of any mortgages or other liens, including delinquent annual assessments secured by PACE liens, shall receive proceeds in accordance with the priorities established under paragraph (a).

Subd. 5. **Lienholder notice.** (a) An implementing entity or a Residential PACE administrator may not enter into a Residential PACE loan contract with a homeowner unless the implementing entity or the Residential PACE administrator has provided written notice to each of the holders of any mortgage or other lien on the qualifying residential real property that the homeowner intends to enter into a Residential PACE loan contract.

(b) No Residential PACE loan may be made unless the implementing entity or the Residential PACE administrator obtains written, signed confirmation from the holder of any mortgage or other lien on the qualifying residential real property that entering into the Residential PACE loan contract does not constitute an event of default or give rise to any remedies under the terms of the mortgage loan or other contractual agreement.

Subd. 6. **Registration; oversight.** (a) No Residential PACE administrator may operate in this state without first becoming registered with the commissioner. An administrator applying for registration must provide the following information in a form prescribed by the commissioner:

(1) the full name of each natural person who is a principal of the administrator;

(2) the mailing address, which must not be a post office box, the telephone number, and, if applicable, the e-mail address of the primary office of the administrator and any branch offices in this state;

(3) consent to the jurisdiction of the courts of this state;

(4) the name and address of the registered agent in this state authorized to accept service of process on behalf of the administrator;

(5) disclosure of:

(i) whether any controlling or affiliated party has ever been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation, or any violation of a federal or state law or regulation relating to any consumer fraud, false advertising, deceptive trade practices, or similar consumer protection law;

(ii) any judgments, private or public litigation, tax liens, written complaints, administrative actions, or investigations by any government agency against the administrator, or against any officer, director, manager, or shareholder of either owning more than five percent interest in the administrator, unresolved or otherwise, filed or otherwise commenced within the preceding ten years;

(iii) whether the administrator, or any person employed by the administrator, has had a record of having defaulted in the payment of money collected for others, including the discharge of debts through bankruptcy proceedings;

(iv) whether authority granted to the administrator to operate in any other state has ever been denied, revoked, or suspended; and

(6) any other information and material as the commissioner may require.

(b) The commissioner, with notice to the administrator by certified mail sent to the address listed on the registration application, may:

(1) deny a registration based on information required under paragraph (a);

(2) suspend, revoke, or refuse to renew any registration issued under this section; and

(3) levy a civil penalty under section 45.027, or any combination of actions, if the administrator or any controlling or affiliated person has committed any act or omission for which the commissioner could have refused to issue an initial registration.

(c) The commissioner shall have the power vested under section 46.04 to conduct financial examinations of registrants. Each registrant must keep, and use in the registrant's business, such books, accounts, and records, including electronic records, as will enable the commissioner to determine whether the registrant is complying with this section and any rules, orders, and directives adopted by the commissioner under this section. Every registrant must preserve such books, accounts, and records for at least six years after making the final entry on any transaction recorded therein. Examinations of the books, records, and method of operations conducted under the supervision of the commissioner shall be done at the cost of the registrant. The cost must be assessed as determined under section 46.131.

**Subd. 7. Fees. [SPECIFIC AMOUNT TO BE DETERMINED, SPECIFIED].**

Subd. 8. **Reports.** [PLACEHOLDER – SPECIFIC ITEMS TO BE REPORTED TO BE DETERMINED, SPECIFIED].

Subd. 9. **Bond.** [PLACEHOLDER – SPECIFIC AMOUNT AND USE TO BE DETERMINED, SPECIFIED].

Subd. 10. **Residential PACE loan contracts.** (a) A Residential PACE loan contract must:

(1) be in writing and must be signed by:

(i) the homeowner;

(ii) all other persons on the deed, mortgage, or note having a legal interest in the property;

(iii) the Residential PACE loan contractor; and

(iv) the Residential PACE administrator.

(2) contain all the terms and conditions of a Residential PACE loan and the installation of cost-effective energy improvements.

(3) be written in the primary language of the homeowner:

(i) at the homeowner’s request;

(ii) if the Residential PACE loan is advertised in that language; or

(iii) if the Residential PACE loan contract was described, discussed, or negotiated in that language,

regardless of whether the Residential PACE loan is advertised in that language.

(4) conspicuously display both the verbatim statement that “[insert name of the Residential PACE administrator] is registered with the Minnesota Department of Commerce” and the registration number of the administrator;

(5) conspicuously display both the verbatim statement that “[insert name of the Residential PACE contractor] is licensed by [insert name of agency]” and the license number of the contractor;

(6) offer a fixed simple interest rate;

(7) charge an interest rate that does not exceed the interest rate limit set forth under in section 334.01, subdivision 1, unless the Residential PACE administrator is otherwise authorized to make loans under section 47.20;

(8) fully amortize the debt obligation;

(9) at any time, permit prepayment of some or all of the Residential PACE loan balance; and

(10) include the right to rescind, as provided under subdivision 13.

(b) If a homeowner is requested to provide an electronic signature on the Residential PACE loan contract:

(1) the Residential PACE contractor and Residential PACE administrator must comply with title 15 of the United States Code, chapter 96; and

(2) the Residential PACE contractor or Residential PACE administrator shall deliver a paper copy of the Residential PACE loan contract to the homeowner no later than five business days following receipt from the homeowner of the electronically signed contract.

(c) A Residential PACE loan may not:

(1) result at any time in negative amortization;

(2) charge any interest upon interest or upon fees;

(3) notwithstanding section 429.061, subdivision 1, contain any provision under which the homeowner is prohibited or restricted from making a prepayment or requiring a penalty, fee, premium, or other charge for prepayment of some or all of the Residential PACE loan;

(4) contain any provision requiring forced arbitration or restricting class actions; or

(5) be entered into with a contract for deed vendee or vendor for the otherwise qualifying residential real property that is subject to the contract for deed.

(d) It shall be unlawful for a Residential PACE administrator or a Residential PACE contractor to enter into a Residential PACE loan contract financed through a Residential PACE loan with a homeowner who the administrator or contractor knew or should have known:

(1) is a vulnerable adult;

(2) a homeowner who is not sufficiently competent to understand the terms of the loan; or

(3) does not have the ability to repay the loan, as provided under subdivision 11.

**Subd. 11. Underwriting.** (a) No Residential PACE loan may be executed by a Residential PACE administrator or a Residential PACE contractor unless the Residential PACE administrator has first verified the ability of the homeowner to repay the Residential PACE loan by:

(1) determining that the ratio of the homeowner's total monthly debt to total monthly income at the time the loan is executed does not exceed 43 percent; and

(2) determining that the homeowner has sufficient residual income to meet basic living expenses; and

(3) considering whether reductions in income or increases in debt that could adversely impact the ability of the homeowner to repay the Residential PACE loan are reasonably anticipated to occur following the execution of the Residential PACE loan; and

(4) considering any other factors, including credit reports and credit scores, that indicate that the homeowner may not have the ability to repay the Residential PACE loan.

(b) For the purposes of this subdivision:

(1) “total monthly income” means the sum of the homeowner's current or reasonably expected income. Income may not be derived from temporary sources of income, illiquid assets, or proceeds derived from the equity the homeowner has in the qualifying residential real property.

(2) “total monthly debt” means the sum of the homeowner’s monthly debt obligations such as: mortgage-related obligations, which include all mortgage principal and interest payments; other secured debt; mortgage guaranty insurance; any other insurance; property taxes; preexisting fees and assessments on the property, including the PACE assessment; unsecured debt; alimony; and child support.

(3) “residual income” means the homeowner’s remaining income after subtracting the homeowner's total monthly debt obligations from the homeowner's total monthly income.

(4) “basic living expenses” include, but are not limited to: food and other household necessities; medical expenses, including premiums, co-pays, and the cost of prescriptions and over-the-counter remedies; transportation costs such as fuel, auto insurance and maintenance; public transit costs; and utility expenses.

(5) “current or reasonably expected income” includes income from assets and excludes the value of the qualifying residential real property, including any attached real property, that secures the Residential PACE loan.

(c) The Residential PACE administrator must use only reliable documents and records to verify the homeowner’s ability to repay the Residential PACE loan. Reliable documents and records include Internal Revenue Service Form W-2 (Wage and Tax Statement) or other similar Internal Revenue Service forms that are used for reporting wages or tax withholding; tax returns; payroll receipts and statements; and financial institution records and statements. A statement by the homeowner to the Residential PACE administrator of the homeowner's income is not sufficient to establish the existence of the income or resources when verifying the homeowner’s ability to repay the Residential PACE loan.

**Subd. 12. Oral confirmation.** (a) Prior to the execution by the homeowner of a Residential PACE contract and prior to the commencement of any installation of any energy improvement, the Residential PACE administrator must orally, in a live, recorded telephone conversation with the homeowner:

(1) confirm the key terms of the agreement and the scope of energy improvement work, including, at a minimum, the measures to be installed that are financed by a Residential PACE loan, the total estimated annual payment, the date the first tax payment will be due, the interest rate expressed as an annual percentage rate, the term of the loan, and that repayments will be made through the homeowner’s property taxes;

(2) verify that the homeowner understands:

(i) the key terms of the agreement;



(ii) that if taxes are escrowed, by how much the escrowed amounts will increase or, if taxes are not escrowed, that the homeowner should consider saving enough money during the year to cover the additional Residential PACE assessment;

(iii) that the Residential PACE loan becomes a PACE lien on the homeowner's property and will likely need to be paid off when the house is sold;

(iv) the monetary penalty that accompanies a homeowner default on property tax payments;

(v) that the homeowner has the right to rescind a Residential PACE loan contract, as provided in subdivision 13; and

(vi) what federal housing agencies, if any, refuse to purchase, insure, refinance, or guarantee mortgages encumbered with PACE liens and what the implications are of that policy for the homeowner; and

(3) communicate that:

(i) energy savings are not guaranteed and the risk that energy savings from the cost-effective energy improvements may not equal or exceed the Residential PACE loan payments that will be added to the homeowner's property taxes;

(ii) refinancing a home encumbered by a Residential PACE lien will likely be more difficult or impossible;

(iii) selling a home encumbered by a Residential PACE lien will likely be more difficult; and

(iv) the homeowner risks tax forfeiture or foreclosure upon default.

(b) At the commencement of the oral confirmation, the administrator must ask if the homeowner would prefer to communicate during the oral confirmation primarily in a language other than English. If the preferred language is supported by the Residential PACE administrator, the oral confirmation shall be given in the preferred language, except where the homeowner on the call chooses to communicate through an interpreter chosen by the homeowner. If the preferred language is not supported and an interpreter is not chosen by the homeowner on the call, the administrator shall terminate the call and no Residential PACE loan contract may be executed.

(c) Notwithstanding paragraph (b), the oral confirmation must be conducted in the primary language of the homeowner if the PACE contract was explained, discussed, or negotiated in that language.

(d) A voicemail message does not meet the requirements of this subdivision.

(e) For purposes of this subdivision, "an interpreter chosen by the homeowner" means a person 18 years of age or older who is able to speak fluently and read with full understanding both the English language and the preferred language of the homeowner, and:

(1) who is not employed by the Residential PACE administrator or the Residential PACE contractor or an affiliate or related entity of the administrator or contractor; or

(2) whose services are not made available through the administrator or the contractor.

Subd. 13. **Right to rescind a Residential PACE loan contract.** (a) A homeowner shall have the right to rescind, without penalty or obligation, a Residential PACE loan contract up to midnight on the seventh calendar day following execution of the contract by the homeowner. For the purposes of this subdivision, the rescission period begins at 12:01 A.M. of the day following the day the contract was executed by the homeowner.

(b) The homeowner shall notify the offering party of the rescission by:

(1) mail or other written communications delivered to the offeror's physical address; or

(2) by electronic means if the Residential PACE administrator or Residential PACE contractor has previously communicated with the homeowner via electronic means.

Service by mail is effective upon deposit in the United States mail.

(c) Any payments made by the homeowner in connection with the Residential PACE loan or a home improvement contract for cost-effective energy improvements financed with a Residential PACE loan must be returned to the homeowner within twenty business days after receipt by the administrator or the contractor by any means of notification of rescission.

(d) If the disclosures required under subdivision 21 are not delivered to the homeowner, the right to rescind shall expire three years after consummation of the Residential PACE loan, upon transfer of all of the homeowner's interest in the property, or upon sale of the property, whichever occurs first.

(e) When more than one homeowner in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all homeowners.

Subd. 14. **Rescission notice and form.** (a) A Residential PACE administrator and a Residential PACE contractor shall furnish the buyer with the following rescission notice and form, which must be in a writing separate from the Residential PACE loan contract and shall not be considered substantive law under this section:

**RESCISSION RIGHT AND FORM**

Your right to cancel

You have the right to rescind (cancel) this contract without penalty up until midnight on [insert day and date].

To rescind (cancel): Mail or otherwise deliver a signed and dated copy of this form to [insert name of the Residential PACE administrator], at [insert physical or, if the Residential PACE administrator accepts electronic rescission, the email address of the Residential PACE administrator].

You do not have to use this form, but must notify [insert the name of the Residential PACE administrator] in writing at the address listed in the previous sentence of your intention to rescind (cancel).

If you rescind (cancel), any payments made by you under this contract will be returned within twenty business days after the Residential PACE administrator receives this form.

**Notice of Rescission Form**

I HEREBY RESCIND (CANCEL) THIS CONTRACT.

\_\_\_\_\_  
(Print your name)

\_\_\_\_\_  
(Sign your name)

\_\_\_\_\_  
(Date)

(b) The document containing the rescission right and form must be provided to the homeowner at the time the homeowner executes the Residential PACE loan contract.

(c) When a homeowner rescinds a Residential PACE loan, the homeowner shall not be liable for any amount, including any finance charge, fees, or other charges.

**Subd. 15. Installation of energy improvements.** (a) Without exception and notwithstanding section 326B.805, subdivision 6, cost-effective energy improvements financed through a Residential PACE loan must be installed by a Residential PACE loan contractor who is licensed by the commissioner of the Department of Labor and Industry or is otherwise subject to statewide licensing.

(b) A Residential PACE contractor may not commence work to install cost-effective energy improvements financed with a Residential PACE loan prior to the expiration of the rescission period provided under subdivision 13. A Residential PACE contractor who violates this paragraph:

(1) is entitled to no compensation for that work;

(2) must restore the property to its original condition at no cost to the homeowner; and

(3) immediately and without condition return all money, property, and other consideration given by the homeowner; and

(c) A Residential PACE contractor may not charge a homeowner a different price for the cost-effective energy improvements and their installation that the contractor would charge for the same or similar installations that are not financed through a Residential PACE loan.

(d) An inspection of all installations and a performance verification of at least ten percent of the cost-effective energy improvements financed by the program must be conducted.

(e) A Residential PACE loan program shall require that all cost-effective energy improvements be made to a qualifying real property prior to, or in conjunction with, an applicant's repayment of financing for cost-effective energy improvements for that property.

**Subd. 16. Coordination with other programs.** A Residential PACE loan program must include cooperation and coordination with the conservation improvement activities of the utility serving the qualifying residential real property under section 216B.241 and other public and private energy improvement programs identified by the commissioner or the commissioner's designee.

**Subd. 17. Retail and end use prohibited.** (a) Energy generated by an energy improvement may not be sold, transmitted, or distributed at retail and may not provide for end use of the electrical energy from an off-site facility. On-site generation is allowed to the extent provided for in section 216B.1611.

(b) This section does not modify the exclusive service territories or exclusive right to serve as provided in sections 216B.37 to 216B.43.

**Subd. 18. Prohibited practices.** (a) No Residential PACE administrator or Residential PACE contractor may:

(1) in any form of communication, make any statement or implication that is false, unfair, unlawful, deceptive, abusive, or misleading, or make any material omission, regardless of reliance on the statement or omission by the homeowner, in connection with a Residential PACE loan or the marketing or offering of cost-effective energy improvements financed through a Residential PACE loan;

(2) indicate or imply that the cost-effective energy improvements will pay for themselves or offset or exceed the amount of the Residential PACE lien, unless the Residential PACE administrator or Residential PACE contractor guarantees in writing that the improvements will pay for themselves or offset or exceed the amount of the Residential PACE lien, and a provision for sufficient consideration to the homeowner is included in the Residential PACE loan contract in the event that the guarantee does not materialize;

(3) indicate or imply that the Residential PACE loan is free, a form of public assistance, or a government program;

(4) indicate or imply that the Residential PACE loan will be repaid, in whole or in part, by a subsequent homeowner;

(5) engage in any false, deceptive, or misleading advertising;

(6) use an implementing entity's logo, city seal, or other graphic in marketing materials or representations;

(7) steer or otherwise direct a homeowner to a Residential PACE loan;

(8) offer or provide any tax advice or information, unless the offeror or provider is a tax expert, provided that a Residential PACE administrator or Residential PACE contractor may:

(i) indicate to a homeowner that tax benefits may be available to certain homeowners who obtain Residential PACE loans; and

(ii) direct the homeowner to seek the advice of an expert regarding tax matters related to the Residential PACE loan;

(9) offer or provide direct or indirect monetary payments or any other form of compensation, incentive, kickback, inducement, or any other thing of value to a homeowner to enter into a Residential PACE loan;

(10) engage in practices prohibited under section 47.605;

(11) engage in practices prohibited under section 332.37;

(12) sell, assign, or otherwise convey a Residential PACE loan debt to a debt buyer;

(13) violate state or federal do-not-call or telemarketing restrictions or prohibitions; or

(14) violate any other state or federal law or rule.

(b) No Residential PACE administrator may:

(i) offer or provide direct or indirect monetary payments or any other form of compensation, incentive, kickback, inducement, or any other thing of value to a Residential PACE contractor to offer, favor, or refer a homeowner to a Residential PACE loan over other forms of financing or credit.

(ii) disclose or permit disclosure to a Residential PACE contractor the amount of PACE loan financing for which a homeowner is eligible.

**Subd. 19. Relation to other laws.** (a) A Residential PACE administrator must comply with the Servicemembers Civil Relief Act, United States Code, title 50, section 3901 et seq., except that, for the purposes of this section, the rights granted under the Act may not be waived.

(b) A Residential PACE administrator is subject to section 582.043.

Subd. 20. **Special protection for low-income homeowners.** (a) Neither a Residential PACE administrator nor a Residential PACE contractor may enter into a Residential PACE loan contract with homeowner unless the administrator first screens the homeowner for eligibility for, and, if eligible, refer the homeowner to, the free Low-Income Weatherization Assistance Program and Low-Income Home Energy Assistance Programs, relevant programs offered by the Minnesota Housing Financing Agency, relevant programs offered by the electric and gas utility company or companies serving the homeowner, and any other relevant no-or low-cost programs known to the administrator or contractor.

(b) For the purposes of this subdivision:

(1) “low-income” means income qualifying a homeowner for assistance under the Low-Income Home Energy Assistance Program;

(2) “Low-Income Home Energy Assistance Program” has the meaning given under section 256J.08, subdivision 52;

(3) “Low-Income Weatherization Assistance Program” means the program described under section 216C.264, subdivision 1.

Subd. 21. **Disclosures.** (a) The following verbatim disclosure must be provided to a homeowner on a one-page document, separate from any other, and in 14-point type:

**IMPORTANT THINGS TO KNOW ABOUT THIS LOAN**

1. **This loan is called a PACE loan.** PACE stands for “Property Assessed Clean Energy Loan.”
2. **This is not a typical loan.** You pay it back through your property taxes. Property taxes are paid annually or twice a year, not monthly, like most loans.
3. **You are putting up your house as a guarantee of repayment (“collateral”) for this loan.** **You could lose your house in foreclosure or tax forfeiture** if you fall behind or cannot meet the tax payments necessary to repay the loan.
4. **This PACE loan will increase your property taxes by [\$ insert annual amount] per year** for [insert duration of the loan] years, unless you pay the loan back early.
5. **Having a PACE loan on the house will likely make it harder to sell your house because you will have to pay off the PACE loan or reduce the price of the house by the amount of the remaining PACE loan balance.**
6. **Having a PACE loan on the house will likely make it more difficult to refinance the mortgage or get a loan modification. It may delay a closing on a sale.**

7. To learn about the benefits and risks of a PACE loan, contact the Minnesota Homeownership Center at 651-659-9336 or 866-462-6466 (toll free) to get the name and location of a local certified housing counseling organization. You might also consider talking to a lawyer.

(b) A Residential PACE administrator or a Residential PACE contractor shall give the disclosure specified in paragraph (a) to the homeowner both at:

(1) the first in-person encounter with the homeowner at which a Residential PACE loan or the installation of energy measures to be financed by a Residential PACE loan is discussed; and

(2) five days prior to the execution by the homeowner of a Residential PACE loan contract.

No other disclosures or papers may be proffered with the required disclosure under this subdivision.

(c) The administrator must ensure that the contact information for the referral provided in the disclosure is up to date.

(d) [OTHER LOAN DISCLOSURES – TERMS, APR, PAYMENT SCHEDULE, ETC. – TO BE DETERMINED AND SPECIFIED]

(E) Included in or in addition to any other disclosures required or otherwise provided, a Residential PACE administrator must provide to the homeowner:

(1) a disclosure of the amount by which escrowed property taxes will increase; and

(2) an annual statement of the status of the Residential PACE loan, including, at a minimum, the amount paid to date and the remaining balance of the loan.

(d) All legally required and voluntary disclosures made in connection with a Residential PACE loan must be provided in the in the primary language of the homeowner if:

(i) requested by the homeowner;

(ii) the Residential PACE loan is advertised in that language; or

(iii) the Residential PACE loan contract was explained, discussed, or negotiated in that language, regardless of whether the Residential PACE loan is advertised in that language.

**Subd. 22. Repayment.** (a) An implementing entity that finances an energy improvement under this section must:

(1) secure payment with a lien against the qualifying real property;

(2) collect repayments as a special assessment as provided for in section 429.101 or by charter, provided that special assessments may be made payable in up to 20 equal annual installments;

(3) impose requirements and conditions on financing arrangements to ensure timely repayment;

(4) require a petition to the implementing entity by all homeowners of the qualifying real property requesting collections of repayments as a special assessment under section 429.101;

(5) provide that payments and assessments are not accelerated due to a default and that a tax delinquency exists only for assessments not paid when due; and

(6) require that liability for special assessments related to the financing runs with the qualifying real property.

(b) If the implementing entity is an authority, the local government that authorized the authority to act as implementing entity shall impose and collect special assessments necessary to pay debt service on bonds issued by the implementing entity under section 216C.436, subdivision 8, and shall transfer all collections of the assessments upon receipt to the authority.

(c) All Residential PACE administrators must develop, offer, and implement binding Residential PACE loan forbearance, modification, and forgiveness mechanisms for homeowners of residential real property who are facing economic hardship. The mechanisms may not result in an increase in monthly payments and must restructure or forgive debt in cases of permanent hardship, including loss of income due to death or disability.

Subd. 23. **Preservation of claims and defenses.** A homeowner or subsequent homeowner of, a successor in interest to, or any person obligated to pay the property taxes on qualifying residential real property encumbered by a PACE lien may assert all claims and defenses against a subsequent Residential PACE administrator that the homeowner who originally entered into the Residential PACE loan could assert against the original Residential PACE administrator or servicer of a Residential PACE loan.

Subd. 24. **Standard of conduct; agency relationship.** (a) Residential PACE administrators, Residential PACE contractors, subcontractors of the Residential PACE contractor, and agents thereof shall act in the utmost good faith toward and in best interests of the homeowners.

(b) For the purposes of this section, a Residential PACE contractor, a subcontractor of the Residential PACE contractor, and any other agent of the contractor is an agent of a Residential PACE administrator. The performance of any act related to a Residential PACE loan contract by a Residential PACE contractor, a subcontractor of the Residential PACE contractor, or any agent of the contractor is considered an act of the administrator, provided the act was within the contractual scope work.

Subd. 25. **Remedies.** (a) Any homeowner aggrieved by a person or entity violating this section is entitled in an action to:



(1) actual, incidental, and consequential damages;

(2) statutory damages of either:

(i) \$5,000; or

(ii) \$10,000 if the defendant violated subdivision 11 or subdivision 17, clause (1);

(3) reasonable attorneys' fees; and

(4) investigative and court costs.

(c) A homeowner of qualified residential real property who is a vulnerable adult is entitled, in addition to any other relief available under this section, to the civil relief available under section 626.557, subdivision 20, if the homeowner prevails in any claim that the defendant:

(1) did not possess a registration as required under subdivision 6;

(2) violated subdivision 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, or 24.

(d) The remedies provided under this subdivision are cumulative, not exclusive, and do not restrict any remedy that is otherwise available to a homeowner at law or in equity.

Subd. 26. **Waivers not permitted.** The parties to a Residential PACE loan contract may not waive any of the rights or requirements set forth or any provision contained in this section. Any waiver of any right, requirement, or provision in a Residential PACE loan contract or home improvement contract for cost-effective energy improvements financed with a Residential PACE loan is void and unenforceable as contrary to public policy.

Sec. 27. Minnesota Statutes 2016, section 290B.03, subdivision 1, is amended to read:

Subdivision 1. **Program qualifications.** The qualifications for the senior citizens' property tax deferral program are as follows:

(1) the property must be owned and occupied as a homestead by a person 65 years of age or older. In the case of a married couple, at least one of the spouses must be at least 65 years old at the time the first property tax deferral is granted, regardless of whether the property is titled in the name of one spouse or both spouses, or titled in another way that permits the property to have homestead status, and the other spouse must be at least 62 years of age;

(2) the total household income of the qualifying homeowners, as defined in section 290A.03, subdivision 5, for the calendar year preceding the year of the initial application may not exceed \$60,000;

(3) the homestead must have been owned and occupied as the homestead of at least one of the qualifying homeowners for at least 15 years prior to the year the initial application is filed;

(4) there are no state or federal tax liens or judgment liens on the homesteaded property;

(5) there are no mortgages or other liens, except for a Residential PACE lien, as that term is defined under section 216C.436, subdivision 10a, on the property that secure future advances, except for those subject to credit limits that result in compliance with clause (6); and

(6) the total unpaid balances of debts secured by mortgages and other liens on the property, including unpaid and delinquent special assessments and interest and any delinquent property taxes, penalties, and interest, but not including property taxes payable during the year, does not exceed 75 percent of the assessor's estimated market value for the year.