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State of Minnesota
HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3688

- 03/12/2018 Authored by O'Driscoll, Hilstrom, Vogel, Maye Quade, Haley and others
- The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform
- 03/21/2018 Adoption of Report: Amended and re-referred to the Committee on Government Operations and Elections Policy
- 03/26/2018 Adoption of Report: Re-referred to the Committee on Job Growth and Energy Affordability Policy and Finance
- 04/09/2018 Adoption of Report: Re-referred to the Committee on Taxes

1.1 A bill for an act

1.2 relating to energy; modifying the energy improvements program; providing

1.3 consumer protections for residential property assessed clean energy (PACE) loans;

1.4 providing remedies; amending Minnesota Statutes 2016, sections 45.011,

1.5 subdivision 1; 46.04, subdivision 1; 46.131, subdivisions 1, 2, 4; 216C.435,

1.6 subdivisions 1, 2, 3a, 6, 8, by adding subdivisions; 216C.436, subdivisions 1, 2,

1.7 5, 7, 8, 9, by adding a subdivision; 290B.03, subdivision 1; Minnesota Statutes

1.8 2017 Supplement, section 46.131, subdivision 11; proposing coding for new law

1.9 in Minnesota Statutes, chapter 216C; repealing Minnesota Statutes 2016, section

1.10 216C.435, subdivision 5.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. Minnesota Statutes 2016, section 45.011, subdivision 1, is amended to read:

1.13 Subdivision 1. **Scope.** As used in chapters 45 to 80C, 80E to 83, 155A, 216C, 332, 332A,

1.14 332B, 345, and 359, and sections 123A.21, subdivision 7, paragraph (a), clause (23);

1.15 123A.25; 325D.30 to 325D.42; 326B.802 to 326B.885; 386.62 to 386.78; 471.617; and

1.16 471.982, unless the context indicates otherwise, the terms defined in this section have the

1.17 meanings given them.

1.18 Sec. 2. Minnesota Statutes 2016, section 46.04, subdivision 1, is amended to read:

1.19 Subdivision 1. **General.** The commissioner of commerce, referred to as the commissioner

1.20 in chapters 46 to 59A, 216C, 332A, and 332B ~~as the commissioner~~, is vested with all the

1.21 powers, authority, and privileges which, prior to the enactment of Laws 1909, chapter 201,

1.22 were conferred by law upon the public examiner, and shall take over all duties in relation

1.23 to state banks, savings banks, trust companies, savings associations, and other financial

1.24 institutions within the state which, prior to the enactment of chapter 201, were imposed

1.25 upon the public examiner. The commissioner of commerce shall exercise a constant

2.1 supervision, either personally or through the examiners herein provided for, over the books
2.2 and affairs of all state banks, savings banks, trust companies, savings associations, credit
2.3 unions, industrial loan and thrift companies, and other financial institutions doing business
2.4 within this state; and shall, through examiners, examine each financial institution at least
2.5 once every 24 calendar months. In satisfying this examination requirement, the commissioner
2.6 may accept reports of examination prepared by a federal agency having comparable
2.7 supervisory powers and examination procedures. With the exception of industrial loan and
2.8 thrift companies which do not have deposit liabilities and licensed regulated lenders, it shall
2.9 be the principal purpose of these examinations to inspect and verify the assets and liabilities
2.10 of each and so far investigate the character and value of the assets of each institution as to
2.11 determine with reasonable certainty that the values are correctly carried on its books. Assets
2.12 and liabilities shall be verified in accordance with methods of procedure which the
2.13 commissioner may determine to be adequate to carry out the intentions of this section. It
2.14 shall be the further purpose of these examinations to assess the adequacy of capital protection
2.15 and the capacity of the institution to meet usual and reasonably anticipated deposit
2.16 withdrawals and other cash commitments without resorting to excessive borrowing or sale
2.17 of assets at a significant loss, and to investigate each institution's compliance with applicable
2.18 laws and rules. Based on the examination findings, the commissioner shall make a
2.19 determination as to whether the institution is being operated in a safe and sound manner.
2.20 None of the above provisions limits the commissioner in making additional examinations
2.21 as deemed necessary or advisable. The commissioner shall investigate the methods of
2.22 operation and conduct of these institutions and their systems of accounting, to ascertain
2.23 whether these methods and systems are in accordance with law and sound banking principles.
2.24 The commissioner may make requirements as to records as deemed necessary to facilitate
2.25 the carrying out of the commissioner's duties and to properly protect the public interest.
2.26 The commissioner may examine, or cause to be examined by these examiners, on oath, any
2.27 officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial
2.28 institution touching the affairs and business thereof, and may issue, or cause to be issued
2.29 by the examiners, subpoenas, and administer, or cause to be administered by the examiners,
2.30 oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction,
2.31 the refusal may at once be reported to the district court of the district in which the bank or
2.32 other financial institution is located, and this court shall enforce obedience to these subpoenas
2.33 in the manner provided by law for enforcing obedience to subpoenas of the court. In all
2.34 matters relating to official duties, the commissioner of commerce has the power possessed
2.35 by courts of law to issue subpoenas and cause them to be served and enforced, and all
2.36 officers, directors, trustees, and employees of state banks, savings banks, trust companies,

3.1 savings associations, and other financial institutions within the state, and all persons having
3.2 dealings with or knowledge of the affairs or methods of these institutions, shall afford
3.3 reasonable facilities for these examinations, make returns and reports to the commissioner
3.4 of commerce as the commissioner may require; attend and answer, under oath, the
3.5 commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and
3.6 property as the commissioner may desire to inspect, and in all things aid the commissioner
3.7 in the performance of duties.

3.8 Sec. 3. Minnesota Statutes 2016, section 46.131, subdivision 1, is amended to read:

3.9 Subdivision 1. **Examination fee authority.** Examination fees of the Department of
3.10 Commerce shall be assessed against financial institutions and residential PACE
3.11 administrators, as defined in section 216C.435, subdivision 10a, in accordance with the
3.12 provisions of this section.

3.13 Sec. 4. Minnesota Statutes 2016, section 46.131, subdivision 2, is amended to read:

3.14 Subd. 2. **Assessment authority.** Each bank, trust company, savings bank, savings
3.15 association, regulated lender, industrial loan and thrift company, credit union, motor vehicle
3.16 sales finance company, debt management services provider, debt settlement services provider,
3.17 ~~and~~ insurance premium finance company, and residential PACE administrator, as defined
3.18 in section 216C.435, subdivision 10a, organized under the laws of this state or required to
3.19 be administered by the commissioner of commerce shall pay into the state treasury its
3.20 proportionate share of the cost of maintaining the Department of Commerce.

3.21 Sec. 5. Minnesota Statutes 2016, section 46.131, subdivision 4, is amended to read:

3.22 Subd. 4. **General assessment basis.** (a) Assessments shall be made by the commissioner
3.23 against each institution within the industry on an equitable basis, according to the total assets
3.24 of each institution as of the end of the previous calendar year.

3.25 (b) Assessments against residential PACE administrators, as defined in section 216C.435,
3.26 subdivision 10a, must be made by the commissioner according to the total business volume
3.27 as of the end of the previous calendar year.

3.28 Sec. 6. Minnesota Statutes 2017 Supplement, section 46.131, subdivision 11, is amended
3.29 to read:

3.30 Subd. 11. **Financial institutions account; appropriation.** (a) The financial institutions
3.31 account is created as a separate account in the special revenue fund. The account consists

4.1 of funds received from assessments under subdivision 7 ~~and~~, examination fees under
4.2 subdivision 8, and license and renewal fees under section 216C.437, subdivision 12. Earnings,
4.3 including interest, dividends, and any other earnings arising from account assets, must be
4.4 credited to the account.

4.5 (b) Funds in the account are annually appropriated to the commissioner of commerce
4.6 for activities under this section.

4.7 Sec. 7. Minnesota Statutes 2016, section 216C.435, subdivision 1, is amended to read:

4.8 Subdivision 1. **Scope.** For the purposes of ~~this section and section 216C.436~~ sections
4.9 216C.435 to 216C.437, the following terms defined in this section have the meanings given
4.10 them.

4.11 Sec. 8. Minnesota Statutes 2016, section 216C.435, subdivision 2, is amended to read:

4.12 Subd. 2. **Authority.** "Authority" means a housing and redevelopment authority or
4.13 economic development authority created pursuant to section 469.003, 469.004, or 469.091,
4.14 a port authority pursuant to section 469.049, 469.1082, or special law, or another entity
4.15 authorized by law to exercise the powers of an authority created pursuant to one of those
4.16 sections. Authority does not include a residential PACE administrator.

4.17 Sec. 9. Minnesota Statutes 2016, section 216C.435, subdivision 3a, is amended to read:

4.18 Subd. 3a. **Cost-effective energy improvements.** "Cost-effective energy improvements"
4.19 mean ~~energy improvements~~:

4.20 (1) any renovation or retrofitting of:

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

4.26 (ii) qualifying residential real property that is permanently affixed to the property and
4.27 is eligible to receive an incentive through a program offered by the electric or natural gas
4.28 utility that provides service under section 216B.241 to the property or is otherwise determined
4.29 to be a cost-effective energy improvement by the commissioner under section 216B.241,
4.30 subdivision 1d, paragraph (a);

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

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

5.8 Sec. 10. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
5.9 to read:

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

5.12 Sec. 11. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
5.13 to read:

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

5.15 Sec. 12. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
5.16 to read:

5.17 Subd. 5a. **Homeowner.** "Homeowner" means an owner of qualifying residential real
5.18 property. Homeowner includes all the persons on the deed having a legal interest in the
5.19 property and all persons on the mortgage or note.

5.20 Sec. 13. Minnesota Statutes 2016, section 216C.435, subdivision 6, is amended to read:

5.21 Subd. 6. **Implementing entity.** "Implementing entity" means the local government or
5.22 an authority designated by the local government by resolution to implement and administer
5.23 programs described in ~~section~~ sections 216C.436 and 216C.437. Implementing entity does
5.24 not include a residential PACE administrator.

5.25 Sec. 14. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
5.26 to read:

5.27 Subd. 7b. **PACE.** "PACE" means property assessed clean energy.

6.1 Sec. 15. Minnesota Statutes 2016, section 216C.435, subdivision 8, is amended to read:

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

6.7 Sec. 16. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
6.8 to read:

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

6.13 Sec. 17. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
6.14 to read:

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

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

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

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

6.26 Sec. 18. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
6.27 to read:

6.28 Subd. 10b. **Residential PACE loan contract.** "Residential PACE loan contract" means
6.29 the legal agreement for the financing and installation of cost-effective energy improvements
6.30 under the residential PACE program.

7.1 Sec. 19. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
7.2 to read:

7.3 Subd. 10c. **Residential PACE contractor.** "Residential PACE contractor" means a
7.4 person or entity that installs cost-effective energy improvements financed, in whole or in
7.5 part, by a PACE loan.

7.6 Sec. 20. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
7.7 to read:

7.8 Subd. 10d. **Residential PACE lien.** "Residential PACE lien" means the encumbrance
7.9 on the qualifying residential real property created by the special assessment as provided in
7.10 section 216C.437, subdivision 28.

7.11 Sec. 21. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
7.12 to read:

7.13 Subd. 10e. **Residential PACE loan.** "Residential PACE loan" means the extension of
7.14 financing that is offered to pay for the installation of cost-effective energy improvements
7.15 on a homeowner's qualifying residential real property and is repayable by the homeowner
7.16 through a special assessment as provided under section 216C.437, subdivision 28.

7.17 Sec. 22. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
7.18 to read:

7.19 Subd. 10f. **Residential PACE loan program.** "Residential PACE loan program" means
7.20 the financing program established under section 216C.437.

7.21 Sec. 23. Minnesota Statutes 2016, section 216C.435, is amended by adding a subdivision
7.22 to read:

7.23 Subd. 13. **Vulnerable adult.** "Vulnerable adult" means any person 18 years of age or
7.24 older who:

7.25 (1) receives services from a home care provider required to be licensed under sections
7.26 144A.43 to 144A.482, or from a person or organization that offers, provides, or arranges
7.27 for personal care assistance services under the medical assistance program as authorized
7.28 under section 256B.0625, subdivision 19a, 256B.0651, 256B.0653, 256B.0654, 256B.0659,
7.29 or 256B.85;

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

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

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

8.11 Sec. 24. Minnesota Statutes 2016, section 216C.436, subdivision 1, is amended to read:

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

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

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

8.25 Sec. 26. Minnesota Statutes 2016, section 216C.436, subdivision 2, is amended to read:

8.26 Subd. 2. **Program requirements.** A ~~financing~~ commercial PACE loan program must:

8.27 (1) impose requirements and conditions on financing arrangements to ensure timely
8.28 repayment;

8.29 (2) require an energy audit or renewable energy system feasibility study to be conducted
8.30 on the qualifying commercial real property and reviewed by the implementing entity prior
8.31 to approval of the financing;

9.1 (3) require the inspection of all installations and a performance verification of at least
9.2 ten percent of the cost-effective energy improvements financed by the program;

9.3 (4) not prohibit the financing of all cost-effective energy improvements not otherwise
9.4 prohibited by this section;

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

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

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

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

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

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

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

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

9.22 Sec. 27. Minnesota Statutes 2016, section 216C.436, subdivision 5, is amended to read:

9.23 Subd. 5. **Coordination with other programs.** A ~~financing~~ commercial PACE loan
9.24 program must include cooperation and coordination with the conservation improvement
9.25 activities of the utility serving the qualifying commercial real property under section
9.26 216B.241 and other public and private energy improvement programs.

9.27 Sec. 28. Minnesota Statutes 2016, section 216C.436, subdivision 7, is amended to read:

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

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

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

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

10.8 Sec. 29. Minnesota Statutes 2016, section 216C.436, subdivision 8, is amended to read:

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

10.12 (b) The bonds must be payable as to both principal and interest solely from the revenues
10.13 from the assessments established in subdivision 7 and section 216C.437, subdivision 28.

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

10.21 Sec. 30. Minnesota Statutes 2016, section 216C.436, subdivision 9, is amended to read:

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

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

10.27 Sec. 31. **[216C.437] RESIDENTIAL PACE LOAN PROGRAM; AUTHORITY;**
10.28 **CONSUMER PROTECTIONS.**

10.29 Subdivision 1. **Scope.** This section applies only to programs established under subdivision
10.30 2 that are offered to a homeowner.

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

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

11.10 (c) No implementing entity or residential PACE administrator may:

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

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

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

11.19 Subd. 3. Financing terms. (a) An implementing entity shall ensure that financing
11.20 provided under this section has:

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

11.24 (2) a principal amount not to exceed:

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

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

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

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

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

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

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

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

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

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

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

12.30 Subd. 6. **Licensing.** No residential PACE administrator may operate in this state without
12.31 first obtaining a license from the commissioner. An administrator applying for a license
12.32 must provide the following information in a form prescribed by the commissioner:

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

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

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

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

13.7 (5) disclosure of:

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

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

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

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

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

13.25 Subd. 7. **Term of license.** Licenses for residential PACE administrators issued under
13.26 this chapter expire on December 31 and are renewable on January 1 of each year after that
13.27 date.

13.28 Subd. 8. **Timely renewal.** (a) A person whose application is properly and timely filed
13.29 and who has not received notice of denial of renewal is considered approved for renewal,
13.30 and the person may continue to transact business as a residential PACE administrator whether
13.31 or not the renewed license has been received on or before January 1 of the renewal year.
13.32 An application for renewal of a license is considered timely filed if received by the
13.33 commissioner by December 15 of the renewal year. An application for renewal is considered

14.1 properly filed if made upon forms duly executed and sworn to, accompanied by fees
14.2 prescribed by this chapter, and containing any information that the commissioner requires.

14.3 (b) A person who fails to make a timely application for renewal of a license and who
14.4 has not received the renewal license as of January 1 of the renewal year is unlicensed until
14.5 the renewal license has been issued by the commissioner and is received by the person.

14.6 Subd. 9. **Contents of renewal application.** Application for the renewal of an existing
14.7 license must contain the request for renewal and any changes to the information specified
14.8 in subdivision 6.

14.9 Subd. 10. **Cancellation.** A licensee ceasing an activity or activities regulated by this
14.10 chapter and desiring to no longer be licensed shall simultaneously inform the commissioner
14.11 in writing and surrender the license and all other symbols or indicia of licensure. The licensee
14.12 shall include a plan for the withdrawal from regulated business, including a timetable for
14.13 the disposition of the business.

14.14 Subd. 11. **Powers of the commissioner.** (a) The commissioner has under this section
14.15 the same powers the commissioner has under section 45.027, including the authority to
14.16 impose a civil penalty not to exceed \$10,000 per violation.

14.17 (b) The commissioner may condition or refuse to renew a license for any of the reasons
14.18 the commissioner may deny, suspend, or revoke a license.

14.19 (c) The commissioner may order restitution against persons subject to this section for
14.20 violations of this section.

14.21 (d) The commissioner may issue orders or directives under this section as follows:

14.22 (1) order or direct persons subject to this chapter to cease and desist from conducting
14.23 business, including immediate temporary orders to cease and desist;

14.24 (2) order or direct persons subject to this chapter to cease any harmful activities or
14.25 violations of this chapter, including immediate temporary orders to cease and desist;

14.26 (3) enter immediate temporary orders to cease business under a license if the
14.27 commissioner determines that the license was erroneously granted or the licensee is currently
14.28 in violation of this chapter; and

14.29 (4) order or direct other affirmative action the commissioner considers necessary.

14.30 (e) Each violation or failure to comply with any directive or order of the commissioner
14.31 is a separate and distinct violation or failure.

14.32 Subd. 12. **Fees.** The following fees must be paid to the commissioner:

15.1 (1) for an initial license, \$1,000, \$50 of which is credited to the consumer education
 15.2 account in the special revenue fund; and

15.3 (2) for a renewal license, \$500, \$50 of which is credited to the consumer education
 15.4 account in the special revenue fund.

15.5 Subd. 13. **Financial examinations.** The commissioner shall have the power vested under
 15.6 section 46.04 to conduct financial examinations of licensees. Each residential PACE
 15.7 administrator must keep, and use in licensee's business, any books, accounts, and records,
 15.8 including electronic records, as will enable the commissioner to determine whether the
 15.9 licensee is complying with this section and any rules, orders, and directives adopted by the
 15.10 commissioner under this section. Every licensee must preserve the books, accounts, and
 15.11 records for at least six years after making the final entry on any transaction recorded.
 15.12 Examinations of the books, records, and method of operations conducted under the
 15.13 supervision of the commissioner shall be done at the cost of the licensee. The cost must be
 15.14 assessed as determined under section 46.131.

15.15 Subd. 14. **Bond.** (a) An applicant for a residential PACE administrator license must file
 15.16 with the department a surety bond in the amount of \$100,000, issued by an insurance
 15.17 company authorized to do so in this state. The bond must cover all persons who are
 15.18 employees or agents of the applicant. The bond must be available for the recovery of
 15.19 expenses, fines, and fees levied by the commissioner under this chapter and for losses
 15.20 incurred by homeowners as a result of a licensee's noncompliance with the requirements of
 15.21 this section, sections 325D.43 to 325D.48, 325F.67 to 325F.69, or breach of contract relating
 15.22 to activities regulated by this chapter.

15.23 (b) The bond must be submitted with the administrator's license application and evidence
 15.24 of continued coverage must be submitted with each renewal. Any change in the bond must
 15.25 be submitted for approval by the commissioner within ten days of its execution. The bond
 15.26 or a substitute bond shall remain in effect during all periods of licensing.

15.27 (c) A licensee shall maintain or increase its surety bond to reflect the total dollar amount
 15.28 of the residential PACE loans made in this state in the preceding year according to the table
 15.29 in this paragraph. A licensee may decrease its surety bond according to the table in this
 15.30 paragraph if the surety bond required is less than the amount of the surety bond on file with
 15.31 the department.

<u>Dollar Amount of Residential PACE Loans</u>	<u>Surety Bond Required</u>
<u>\$0 to \$5,000,000</u>	<u>\$100,000</u>
<u>\$5,000,000.01 to \$10,000,000</u>	<u>\$125,000</u>

16.1	<u>\$10,000,000.01 to \$25,000,000</u>	<u>\$150,000</u>
16.2	<u>Over \$25,000,000</u>	<u>\$200,000</u>

16.3 Subd. 15. **Annual reporting.** Residential PACE administrators shall file reports by
16.4 March 31 of each year on forms supplied by the commissioner and containing information
16.5 required by the commissioner.

16.6 Subd. 16. **Residential PACE loan contracts.** (a) A residential PACE loan contract
16.7 must:

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

16.9 (i) the homeowner;

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

16.11 (iii) the residential PACE contractor; and

16.12 (iv) the residential PACE administrator;

16.13 (2) contain all the terms and conditions of a residential PACE loan and the installation
16.14 of cost-effective energy improvements;

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

16.16 (i) at the homeowner's request;

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

16.18 (iii) if the residential PACE loan contract was described, discussed, or negotiated in that
16.19 language, regardless of whether the residential PACE loan is advertised in that language;

16.20 (4) conspicuously display both the verbatim statement that "[insert name of the residential
16.21 PACE administrator] is licensed with the Minnesota Department of Commerce" and the
16.22 license number of the administrator;

16.23 (5) conspicuously display both the verbatim statement that "[insert name of the residential
16.24 PACE contractor] is licensed by [insert name of agency]" and the license number of the
16.25 contractor;

16.26 (6) offer a fixed, simple interest rate;

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

16.30 (8) fully amortize the debt obligation;

- 17.1 (9) at any time, permit prepayment of some or all of the residential PACE loan balance;
17.2 and
- 17.3 (10) include the right to rescind, as provided under subdivision 19.
- 17.4 (b) If a homeowner is requested to provide an electronic signature on the residential
17.5 PACE loan contract:
- 17.6 (1) the residential PACE contractor and residential PACE administrator must comply
17.7 with United States Code, title 15, chapter 96; and
- 17.8 (2) the residential PACE contractor or residential PACE administrator shall deliver a
17.9 paper copy of the residential PACE loan contract to the homeowner no later than five
17.10 business days following receipt from the homeowner of the electronically signed contract.
- 17.11 (c) A residential PACE loan may not:
- 17.12 (1) result at any time in negative amortization;
- 17.13 (2) charge any interest upon interest or upon fees;
- 17.14 (3) notwithstanding section 429.061, subdivision 1, contain any provision under which
17.15 the homeowner is prohibited or restricted from making a prepayment or requiring a penalty,
17.16 fee, premium, or other charge for prepayment of some or all of the residential PACE loan;
- 17.17 (4) contain any provision requiring forced arbitration or restricting class actions; or
- 17.18 (5) be entered into with a contract for deed vendee or vendor for the otherwise qualifying
17.19 residential real property that is subject to the contract for deed.
- 17.20 (d) It shall be unlawful for a residential PACE administrator or a residential PACE
17.21 contractor to enter into a residential PACE loan contract financed through a residential
17.22 PACE loan with a homeowner who the administrator or contractor knew or should have
17.23 known:
- 17.24 (1) is a vulnerable adult;
- 17.25 (2) is a homeowner who is not sufficiently competent to understand the terms of the
17.26 loan; or
- 17.27 (3) does not have the ability to repay the loan, as provided under subdivision 17.
- 17.28 Subd. 17. **Underwriting.** (a) No residential PACE loan may be executed by a residential
17.29 PACE administrator or a residential PACE contractor unless the administrator has first
17.30 verified the ability of the homeowner to repay the residential PACE loan by:

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

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

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

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

18.10 (b) For the purposes of this subdivision:

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

18.15 (2) "total monthly debt" means the sum of the homeowner's monthly debt obligations
18.16 including but not limited to mortgage-related obligations that include all mortgage principal
18.17 and interest payments; other secured debt; mortgage guaranty insurance; any other insurance;
18.18 property taxes; preexisting fees and assessments on the property, including the PACE
18.19 assessment; unsecured debt; alimony; and child support;

18.20 (3) "residual income" means the homeowner's remaining income after subtracting the
18.21 homeowner's total monthly debt obligations from the homeowner's total monthly income;

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

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

18.29 (c) The residential PACE administrator must use only reliable documents and records
18.30 to verify the homeowner's ability to repay the residential PACE loan. Reliable documents
18.31 and records include Internal Revenue Service Form W-2 (Wage and Tax Statement) or other
18.32 similar Internal Revenue Service forms that are used for reporting wages or tax withholding,
18.33 tax returns, payroll receipts and statements, and financial institution records and statements.

19.1 A statement by the homeowner to the residential PACE administrator of the homeowner's
19.2 income is not sufficient to establish the existence of the income or resources when verifying
19.3 the homeowner's ability to repay the residential PACE loan.

19.4 Subd. 18. **Oral confirmation.** (a) Prior to the execution by the homeowner of a residential
19.5 PACE contract and prior to the commencement of any installation of any energy
19.6 improvement, the residential PACE administrator must orally, in a live, recorded telephone
19.7 conversation with the homeowner:

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

19.13 (2) verify that the homeowner understands:

19.14 (i) the key terms of the agreement;

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

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

19.20 (iv) the monetary penalty that accompanies a homeowner delinquency or default on
19.21 property tax payments; and

19.22 (v) that the homeowner has the right to rescind a residential PACE loan contract, as
19.23 provided in subdivision 19; and

19.24 (3) communicate that:

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

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

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

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

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

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

20.12 (d) A voice mail message does not meet the requirements of this subdivision.

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

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

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

20.20 **Subd. 19. Right to rescind a residential PACE loan contract.** (a) A homeowner shall
20.21 have the right to rescind, without penalty or obligation, a residential PACE loan contract
20.22 until midnight on the third calendar day following execution of the contract by the
20.23 homeowner. For the purposes of this subdivision, the rescission period begins at 12:01 a.m.
20.24 of the day following the day the contract was executed by the homeowner.

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

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

20.27 (2) by electronic means if the residential PACE administrator or residential PACE
20.28 contractor has previously communicated with the homeowner via electronic means. Service
20.29 by mail is effective upon deposit in the United States mail.

20.30 (c) Any payments made by the homeowner in connection with the residential PACE
20.31 loan or a home improvement contract for cost-effective energy improvements financed with
20.32 a residential PACE loan must be returned to the homeowner within 20 business days after
20.33 receipt by the administrator or the contractor by any means of notification of rescission.

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

21.3 Subd. 20. Rescission notice and form. (a) A residential PACE administrator and a
21.4 residential PACE contractor shall furnish the buyer with the following rescission notice and
21.5 form, which must be in a writing separate from the residential PACE loan contract and shall
21.6 not be considered substantive law under this section:

21.7 **RESCISSION RIGHT AND FORM**

21.8 Your right to cancel

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

21.11 To rescind (cancel): Mail or otherwise deliver a signed and dated copy of this form to
21.12 [insert name of the residential PACE administrator] at [insert physical or, if the residential
21.13 PACE administrator accepts electronic rescission, the e-mail address of the residential PACE
21.14 administrator].

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

21.18 If you rescind (cancel), any payments made by you under this contract will be returned
21.19 within 20 business days after the residential PACE administrator receives this form.

21.20 **Notice of Rescission Form**

21.21 I HEREBY RESCIND (CANCEL) THIS CONTRACT.

21.22

21.23 (Print your name)

21.24

21.25 (Sign your name)

21.26

21.27 (Date)

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

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

22.1 Subd. 21. **Installation of energy improvements.** (a) Without exception and
22.2 notwithstanding section 326B.805, subdivision 6, cost-effective energy improvements
22.3 financed through a residential PACE loan must be installed by a residential PACE contractor
22.4 who is licensed by the commissioner of labor and industry as a residential building contractor
22.5 or residential remodeler, except that mechanical contractors, plumbing contractors, electrical
22.6 contractors, and technology system contractors properly registered or licensed under chapter
22.7 326B may perform installation of energy improvements that fall completely within the scope
22.8 of the contractor's registration or license.

22.9 (b) A residential PACE contractor may not commence work to install cost-effective
22.10 energy improvements financed with a residential PACE loan prior to the expiration of the
22.11 rescission period provided under subdivision 19. A residential PACE contractor who violates
22.12 this paragraph:

22.13 (1) is not entitled to compensation for that work;

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

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

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

22.20 (d) An implementing entity must inspect all installations and conduct a performance
22.21 verification of at least ten percent of the cost-effective energy improvements financed by
22.22 the program.

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

22.26 Subd. 22. **Coordination with other programs.** A residential PACE loan program must
22.27 include cooperation and coordination with the conservation improvement activities of the
22.28 utility serving the qualifying residential real property under section 216B.241 and other
22.29 public and private energy improvement programs identified by the commissioner or the
22.30 commissioner's designee.

22.31 Subd. 23. **Retail and end use prohibited.** (a) Energy generated by an energy
22.32 improvement may not be sold, transmitted, or distributed at retail and may not provide for

23.1 end use of the electrical energy from an off-site facility. On-site generation is allowed to
23.2 the extent provided for in section 216B.1611.

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

23.5 Subd. 24. **Prohibited practices.** (a) No residential PACE administrator or residential
23.6 PACE contractor may:

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

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

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

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

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

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

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

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

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

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

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

24.4 (10) engage in practices prohibited under section 47.605;

24.5 (11) engage in practices prohibited under section 332.37;

24.6 (12) engage in practices prohibited under section 326B.84;

24.7 (13) enter into any residential PACE loan unless both the Federal Housing Finance
24.8 Agency and the Federal Housing Administration will purchase, refinance, or insure mortgages
24.9 encumbered by PACE liens;

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

24.11 (15) violate any other state or federal law or rule.

24.12 (b) No residential PACE administrator may:

24.13 (1) offer or provide direct or indirect monetary payments or any other form of
24.14 compensation, incentive, kickback, inducement, or any other thing of value to a residential
24.15 PACE contractor to offer, favor, or refer a homeowner to a residential PACE loan over
24.16 other forms of financing or credit; and

24.17 (2) disclose or permit disclosure to a residential PACE contractor the amount of PACE
24.18 loan financing for which a homeowner is eligible.

24.19 Subd. 25. **Relation to other laws.** (a) A residential PACE administrator must comply
24.20 with the Servicemembers Civil Relief Act, United States Code, title 50, section 3901, et
24.21 seq., except that, for the purposes of this section, the rights granted under the act may not
24.22 be waived.

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

24.24 Subd. 26. **Special protection for low-income homeowners.** (a) Neither a residential
24.25 PACE administrator nor a residential PACE contractor may enter into a residential PACE
24.26 loan contract with a homeowner unless the administrator first screens the homeowner for
24.27 eligibility for, and, if eligible, refers the homeowner to, the free low-income weatherization
24.28 assistance program and low-income home energy assistance programs, relevant programs
24.29 offered by the Minnesota Housing Finance Agency, relevant programs offered by the electric
24.30 and gas utility company or companies serving the homeowner, and any other relevant no-
24.31 or low-cost programs known to the administrator or contractor.

24.32 (b) For the purposes of this subdivision:

25.1 (1) "low-income" means income qualifying a homeowner for assistance under the
25.2 low-income home energy assistance program;

25.3 (2) "low-income home energy assistance program" has the meaning given under section
25.4 256J.08, subdivision 52; and

25.5 (3) "low-income weatherization assistance program" means the program described under
25.6 section 216C.264.

25.7 Subd. 27. Disclosures. (a) The following verbatim disclosure must be provided to a
25.8 homeowner on a one-page document, separate from any other, and in 14-point type:

25.9 **IMPORTANT THINGS TO KNOW ABOUT THIS LOAN**

25.10 **1. This loan is called a PACE loan. PACE stands for Property Assessed Clean Energy**
25.11 **Loan.**

25.12 **2. This is not a typical loan. You pay it back through your property taxes. Property**
25.13 **taxes are paid annually or twice a year, not monthly, like most loans.**

25.14 **3. You are putting up your house as a guarantee of repayment (collateral) for this loan.**
25.15 **You could lose your house in foreclosure or tax forfeiture if you fall behind or cannot**
25.16 **meet the tax payments necessary to repay the loan.**

25.17 **4. This PACE loan will increase your property taxes by [\$ insert annual amount]**
25.18 **per year for [insert duration of the loan] years, unless you pay the loan back early.**

25.19 **5. Having a PACE loan on the house will likely make it harder to sell your house because**
25.20 **you will have to pay off the PACE loan or reduce the price of the house by the amount of**
25.21 **the remaining PACE loan balance.**

25.22 **6. Having a PACE loan on the house will likely make it more difficult to refinance your**
25.23 **mortgage or get a loan modification. It may also delay a closing on a sale.**

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

25.28 **(b) A residential PACE administrator or a residential PACE contractor shall give the**
25.29 **disclosure in paragraph (a) to the homeowner five days prior to the execution by the**
25.30 **homeowner of a residential PACE loan contract at the first in-person encounter with the**
25.31 **homeowner at which a residential PACE loan or the installation of energy measures to be**
25.32 **financed by a residential PACE loan is discussed.**

26.1 No other disclosures or papers may be proffered with the disclosures and annual statement
26.2 required under this subdivision. The administrator must ensure that the contact information
26.3 for the referral provided in the disclosure is up to date.

26.4 (c) In addition to the disclosure required under paragraph (a), the residential PACE
26.5 administrator must provide, before the execution of a PACE loan contract, a disclosure that
26.6 is approved by the commissioner that includes information specified by the commissioner.
26.7 The disclosure must include:

26.8 (1) the total amount of the assessment;

26.9 (2) the annual assessment payments and a payment schedule;

26.10 (3) the term of the assessment;

26.11 (4) the interest rate and annual percentage rate of the PACE loan, and all applicable fees;

26.12 (5) the improvements to be installed;

26.13 (6) that no penalty shall be assessed or collected for prepayment of the assessment;

26.14 (7) that any potential utility savings are not guaranteed and may not be equal to or greater
26.15 than the assessment payments or total assessment amount;

26.16 (8) that the payments will be added to the homeowner's property tax bill; and

26.17 (9) the amount by which escrowed property taxes will increase.

26.18 (d) A residential PACE administrator must provide an annual statement of the status of
26.19 the residential PACE loan, including, at a minimum, the amount paid to date and the
26.20 remaining balance of the loan.

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

26.23 (1) requested by the homeowner;

26.24 (2) the residential PACE loan is advertised in that language; or

26.25 (3) the residential PACE loan contract was explained, discussed, or negotiated in that
26.26 language, regardless of whether the residential PACE loan is advertised in that language.

26.27 Subd. 28. **Repayment.** (a) An implementing entity that finances an energy improvement
26.28 under this section must:

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

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

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

27.6 (4) require a petition to the implementing entity by all homeowners of the qualifying
27.7 real property requesting collections of repayments as a special assessment under section
27.8 429.101;

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

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

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

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

27.23 Subd. 29. **Prepayment of loan.** A homeowner may prepay a residential PACE loan, in
27.24 whole or in part, at any time or from time to time without penalty or premium by paying
27.25 the principal amount to be prepaid together with accrued interest to the date of prepayment.

27.26 Subd. 30. **Preservation of claims and defenses.** A homeowner or subsequent homeowner
27.27 of, a successor in interest to, or any person obligated to pay the property taxes on qualifying
27.28 residential real property encumbered by a PACE lien may assert all claims and defenses
27.29 against a subsequent residential PACE administrator that the homeowner who originally
27.30 entered into the residential PACE loan could assert against the original residential PACE
27.31 administrator or servicer of a residential PACE loan.

27.32 Subd. 31. **Standard of conduct; agency relationship.** (a) Residential PACE
27.33 administrators, residential PACE contractors, subcontractors of the residential PACE

28.1 contractor, and agents thereof shall act in good faith toward and in the best interests of the
28.2 homeowners.

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

28.9 Subd. 32. Remedies. (a) Any homeowner aggrieved by a person or entity violating this
28.10 section is entitled in an action to:

28.11 (1) actual, incidental, and consequential damages;

28.12 (2) statutory damages of either:

28.13 (i) \$5,000; or

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

28.15 (3) reasonable attorney fees; and

28.16 (4) investigative and court costs.

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

28.21 (1) did not possess a license as required under subdivision 6; and

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

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

28.25 Subd. 33. Waivers not permitted. The parties to a residential PACE loan contract may
28.26 not waive any of the rights or requirements set forth or any provision contained in this
28.27 section. Any waiver of any right, requirement, or provision in a residential PACE loan
28.28 contract or home improvement contract for cost-effective energy improvements financed
28.29 with a residential PACE loan is void and unenforceable as contrary to public policy.

29.1 Sec. 32. Minnesota Statutes 2016, section 290B.03, subdivision 1, is amended to read:

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

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

29.10 (2) the total household income of the qualifying homeowners, as defined in section
29.11 290A.03, subdivision 5, for the calendar year preceding the year of the initial application
29.12 may not exceed \$60,000;

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

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

29.17 (5) there are no mortgages or other liens, except for a residential PACE lien, as that term
29.18 is defined under section 216C.435, subdivision 10d, on the property that secure future
29.19 advances, except for those subject to credit limits that result in compliance with clause (6);
29.20 and

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

29.25 Sec. 33. **REPEALER.**

29.26 Minnesota Statutes 2016, section 216C.435, subdivision 5, is repealed.

216C.435 DEFINITIONS.

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.