



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 646
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Cutrona and Roemer

Yosef Schiff, Attorney

SUMMARY

- Establishes a regulatory framework for residential property assessed clean energy (PACE) loans that a local government or local authority (implementing entity) must follow if such entity adopts a PACE loan program.
- Provides consumer protections on PACE loans by restricting who can qualify for a PACE loan, terms of financing, contract terms, required disclosures, and notices to the homeowner.
- Allows a homeowner to rescind a PACE loan contract within three calendar days following the execution of the contract.
- Requires that prior to entering into a contract with a homeowner for a PACE loan, the residential PACE administrator or the implementing entity must notify the homeowner's mortgage servicer that the homeowner intends to acquire a PACE loan.
- Prohibits a residential PACE administrator or the implementing entity from making a PACE loan unless they obtain written, signed confirmation from the mortgage servicer that the contract does not constitute an event of default or give rise to any remedies under the terms of the mortgage loan.
- Establishes that a PACE lien is subordinate to all previously recorded liens on the property, is always subordinate to a first mortgage that is recorded, and is superior to any other lien on the property that is recorded after the PACE lien.
- Creates a state license for a residential PACE administrator under the Division of Financial Institutions under the Department of Commerce, with the initial license cost of \$1,000 and an annual renewal cost of \$500.
- Requires a residential PACE administrator to obtain a surety bond of at least \$100,000, which may increase depending on the amount of loans made.
- Regulates the actions that a residential PACE administrator is permitted to engage in.

- Authorizes the Superintendent of Financial Institutions to examine the records of a residential PACE administrator and to enforce any of the program’s requirements.
- Requires the residential PACE administrator to record the PACE loan with the county recorder.
- Provides remedies to homeowners aggrieved by a person violating the residential PACE Loan Law.

TABLE OF CONTENTS

Background	3
Residential PACE loans.....	3
The contract	3
Verification of ability to repay.....	6
Oral confirmation	7
Right to rescind	9
Written notices.....	10
Repayment	11
Subsequent homeowners	12
Lien priority	12
Residential PACE administrators.....	12
License	12
Surety bond	14
Disclosures and annual statement	15
Compliance with Servicemembers Civil Relief Act	17
Prohibitions	17
Examination of records; enforcement; discipline	18
Financial examinations and record retention	19
Implementing entities.....	19
Residential PACE contractor prohibitions.....	20
Homeowner’s best interests.....	21
Homeowner’s remedies.....	21
No waiver	22
Conforming changes	22

DETAILED ANALYSIS

Background

Property assessed clean energy (PACE) financing is a mechanism to finance energy efficiency and renewable energy projects. Current law, unchanged by the bill, allows a municipal corporation to establish a low-cost alternative energy revolving loan program to assist owners of real property within the municipal corporation with installing and implementing solar, geothermal, or other alternative energy and energy efficiency technologies. In addition, a municipal corporation or township may create a special improvement district for the purpose of implementing certain types of public improvements including these same energy technologies. The bill establishes a regulatory framework that local governments must follow if they choose to offer *residential* PACE loans (extensions of financing offered to pay for the installation of cost-effective energy improvements on homeowners' qualifying residential real property, repayable by homeowners through special assessments as described in "**Repayment**" below). The bill also implements certain consumer protection measures.¹

Residential PACE loans

The contract

The bill requires each residential PACE loan contract (the legal agreement for a PACE loan under the revolving loan program described above) to meet the following requirements.

The loan must be for qualifying residential real property, which is defined as 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. An implementing entity is the local government or local authority designated by the local government pursuant to the laws governing the low-cost alternative energy revolving loan programs and special improvement districts to implement and administer residential PACE loan programs.²

A contract must be in writing and be signed by all of the following:

- The homeowner, which includes any person on the deed having a legal interest in the property and any person on the mortgage or note;
- The residential PACE contractor, which is a person or entity that installs cost-effective energy improvements financed under a residential PACE loan program established under the bill;

¹ R.C. 717.25 and Chapter 1710.

² R.C. 1356.01.

- The residential PACE administrator, which is an entity with which the implementing entity contracts to administer all or part of a residential PACE program. “Administer” includes the performance of any of the following acts, whether directly or through an agent:
 - Marketing, offering, selling, facilitating, or financing, in whole or in part, a PACE loan;
 - Facilitating, arranging, or contracting for the installation of the cost-effective energy improvements financed through a PACE loan;
 - Offering any other service to an implementing entity in connection with a PACE loan or operating a PACE loan program.³

In general, a contract must be in English. However, it must be in both English and another language if the homeowner’s primary language is a language other than English and any of the following apply:

- The homeowner makes a request for the residential PACE loan contract to be in the primary language of the homeowner.
- The residential PACE loan is advertised in the primary language of the homeowner.
- The residential PACE loan contract was described, discussed, or negotiated in the primary language of the homeowner, regardless of whether the residential PACE loan is advertised in that language.⁴

Each residential PACE loan contract must conspicuously display both the verbatim statement that “[name of the residential PACE administrator] is licensed with the Ohio Department of Commerce Division of Financial Institutions” and the license number of the licensee (a person licensed to make residential PACE loans under the bill).⁵

The contract must contain all the terms and conditions of a residential PACE loan and the installation of cost-effective energy improvements. The contract must do all of the following:

- Offer a fixed, simple interest rate;
- Charge an annual interest rate that does not exceed 8% unless otherwise allowed under the Ohio usury law;⁶
- Fully amortize the debt obligation;
- At any time, permit prepayment of some or all of the residential PACE loan balance;

³ R.C. 1356.01(A), (E), and (H), and 1356.10(A).

⁴ R.C. 1356.10(C).

⁵ R.C. 1356.10(D).

⁶ R.C. 1343.01.

- Include the right to rescind, as provided in “**Right to rescind**” below.⁷

If the homeowner signs a paper contract, upon execution of the contract the residential PACE administrator must provide the homeowner a paper copy of the contract. If a homeowner is requested to provide an electronic signature on the residential PACE loan contract, both of the following apply:

- The residential PACE administrator must comply with the federal Electronic Signatures in Global and National Commerce Act.⁸
- Upon execution of the contract, the residential PACE administrator must provide a paper copy of the residential PACE loan contract to the homeowner.⁹

A residential PACE loan may not do any of the following:

- Result at any time in negative amortization;
- Charge any interest upon interest or upon fees;
- 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;
- Contain any provision requiring forced arbitration or restricting class actions;
- Be entered into with a vendee or vendor as defined in the Ohio land installment contract law for the otherwise qualifying residential real property that is subject to a land installment contract.¹⁰

No residential PACE administrator may enter into a residential PACE loan contract with a homeowner who the administrator knew or should have known to be any of the following:

- A vulnerable adult (a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for the person’s own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging);
- A homeowner who is not sufficiently competent to understand the terms of the loan;
- Lacking the ability to repay the loan, as provided under “**Verification of ability to repay**” below.¹¹

⁷ R.C. 1356.10(B) and (E).

⁸ 15 United States Code (U.S.C.) Chapter 96.

⁹ R.C. 1356.10(F).

¹⁰ R.C. 1356.10(G).

¹¹ R.C. 1356.10(H) and 1356.01.

Verification of ability to repay

The bill prohibits a residential PACE administrator from executing a residential PACE loan unless the administrator has first verified the ability of the homeowner to repay the loan by doing all of the following:

- 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%;
- Determining that the homeowner has sufficient residual income to meet basic living expenses, which include the following:
 - 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, motor vehicle insurance, and maintenance;
 - Public transit costs;
 - Utility expenses.
- Considering whether reductions in income or increases in debt that could adversely impact the ability of the homeowner to repay the loan are reasonably anticipated to occur following the execution of the loan;
- Considering any other factors, including credit reports and credit scores, that indicate that the homeowner may not have the ability to repay the loan.

The administrator may use only reliable documents and records to verify the homeowner’s ability to repay the loan. Reliable documents and records include any of the following:

- Internal Revenue Service form W-2 “Wage and Tax Statements,” or other similar Internal Revenue Service forms that are used for reporting wages or tax withholding, tax returns, payroll receipts, and statements;
- Financial institution records and statements.

Under the bill, a statement by the homeowner to the 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 loan.

As used in “**Verification of ability to repay**”:

- “**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.
- “**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, liquid

assets, or proceeds derived from the equity the homeowner has in the qualifying residential real property.

- **“Total monthly debt”** means the sum of the homeowner’s monthly debt obligations including mortgage-related obligations that include all mortgage principal and interest payments, other secured debt, mortgage guaranty insurance, any other insurance, property taxes, pre-existing fees and special assessments on the property, including the special assessment for a residential PACE loan, unsecured debt, alimony, and child support.
- **“Residual income”** means the homeowner’s remaining income after subtracting the homeowner’s total monthly debt obligations from the homeowner’s total monthly income.¹²

Oral confirmation

Prior to the execution by the homeowner of a residential PACE loan contract and prior to the commencement of any installation of any energy improvement, the bill requires the residential PACE administrator to orally, in a live, recorded telephone conversation with the homeowner, do all of the following:

- Confirm the key terms of the agreement and the scope of energy improvement work, including, at a minimum, all of the following:
 - 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;
 - That repayments will be made through the homeowner’s property taxes.
- Verify that the homeowner understands all of the following:
 - The key terms of the agreement;
 - 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 special assessment;
 - That the residential PACE loan becomes a residential PACE lien (the encumbrance on the qualifying residential real property created by the special assessment as provided in **“Repayment”** below) on the homeowner’s property and will likely need to be paid off when the house is sold;

¹² R.C. 1356.11.

- That monetary penalties and interest are charged on delinquent taxes owed by a homeowner. The bill uses the same definition of “delinquent taxes” as the county tax collection law, under which it means:
 - ❖ Any taxes charged against an entry on the general tax list and duplicate of real and public utility property that were charged against an entry on such list and duplicate for a prior tax year and any penalties and interest charged against such taxes.
 - ❖ Any current taxes charged on the general tax list and duplicate of real and public utility property that remain unpaid after the last day prescribed for payment of the second installment of such taxes without penalty, whether or not they have been certified delinquent, and any penalties and interest charged against such taxes.¹³
- That the homeowner has the right to rescind a residential PACE loan contract, as provided in “**Right to rescind**” below.
- Communicate all of the following:
 - That 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;
 - That refinancing a home encumbered by a residential PACE lien will likely be more difficult or impossible;
 - That selling a home encumbered by a residential PACE lien will likely be more difficult;
 - That the homeowner risks tax foreclosure upon default.

Under the bill, 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 administrator, the oral confirmation must 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 bill requires the administrator to terminate the call and no residential PACE loan contract may be executed.

Notwithstanding the preceding paragraph, the oral confirmation must be conducted in the primary language of the homeowner if the residential PACE loan contract was explained, discussed, or negotiated in that language.

¹³ R.C. 323.01.

The bill provides that a voice mail message does not meet the oral confirmation requirements.

For purposes of the oral confirmation provisions, “an interpreter chosen by the homeowner” means a person that meets all of the following qualifications:

- Is 18 years of age or older;
- Is able to speak fluently and read with full understanding both the English language and the preferred language of the homeowner;
- Is not employed by, or whose services are not made available through, the residential PACE administrator or the residential PACE contractor or an affiliate or related entity of the administrator or contractor.¹⁴

Right to rescind

The bill provides that a homeowner has the right to rescind, without penalty or obligation, a residential PACE loan contract until midnight on the third calendar day following execution of the contract by the homeowner. The rescission period begins at 12:01 a.m. of the day following the day the contract was executed by the homeowner.

If the homeowner rescinds, the bill requires them to notify the offering party of the rescission by either of the following methods:

- Mail or other written communications delivered to the offeror’s physical address. Service by mail is effective upon deposit at a United States post office.
- By electronic means if the residential PACE administrator has previously communicated with the homeowner via electronic means.

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 20 business days after receipt by the residential PACE administrator of notification of rescission.

Under the bill, if more than one homeowner in a transaction has the right to rescind, the exercise of the right by one homeowner is effective as to all homeowners.

The bill requires a residential PACE administrator to provide the homeowner with the following rescission notice and form, which must be in a writing separate from the residential PACE loan contract:

¹⁴ R.C. 1356.12.

RESCISSION RIGHT AND FORM

Your right to cancel

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

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

You do not have to use this form, but must notify [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)

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.

When a homeowner rescinds a residential PACE loan contract, the homeowner is not liable for any amount, including any finance charge, fees, or other charges.¹⁵

Written notices

The bill prohibits an implementing entity or a residential PACE administrator from entering 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 servicers of any mortgage or other lien on the qualifying residential real property that the homeowner intends to enter into a residential PACE loan contract.

¹⁵ R.C. 1356.14.

No residential PACE loan may be made unless the implementing entity or the residential PACE administrator obtains written, signed confirmation from the servicer 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.

Under the bill, the residential PACE administrator must record a notice of the residential PACE loan, containing the legal description of the property, with the county recorder, within 30 days of the first date of funding of the residential PACE loan.¹⁶

Repayment

The bill requires an implementing entity to do all of the following:

- Secure payment with a residential PACE lien against the qualifying real property;
- Collect repayments as a special assessment as provided for in the laws governing the low-cost alternative energy revolving loan programs and special improvement districts,¹⁷ provided that special assessments for a residential PACE loan must be made payable in up to 20 equal annual installments;
- Impose requirements and conditions on financing arrangements to ensure timely repayment;
- Provide that payments and special assessments are not accelerated due to a default and that delinquent special assessments be subordinate to all other special assessments charged against the property at the time of default. Payments made by the homeowner must first be applied to any delinquent special assessments before a current special assessment.
- Require that liability for special assessments related to the financing runs with the qualifying real property.

Under the bill, 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 bill prohibits the mechanisms from resulting in an increase in monthly payments and requires them to restructure or forgive debt in cases of permanent hardship, including loss of income due to death or disability.

The bill allows a homeowner to prepay a residential PACE loan, in whole or in part, at any time or from time to time without penalty or premium by paying the principal amount to be prepaid together with accrued interest to the date of prepayment.¹⁸

¹⁶ R.C. 1356.04.

¹⁷ R.C. 717.25 and Chapter 1710.

¹⁸ R.C. 1356.18, conforming changes in 1710.01, 1710.02, and 1710.06.

Subsequent homeowners

The bill permits 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 residential PACE lien to 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.¹⁹

Lien priority

The bill provides that, notwithstanding any provision of law to the contrary, a residential PACE lien is all of the following:

- Subordinate to all liens on the qualifying residential real property recorded prior to the time the residential PACE lien is recorded;
- Subordinate to a first mortgage on the qualifying property recorded after the residential PACE lien is recorded;
- Subject to the above bullet point, superior to any other lien on the qualifying residential real property recorded after the residential PACE lien is recorded.

Notwithstanding any other law to the contrary, in the event of a foreclosure sale of a qualifying residential real property, the holders of any mortgages or other liens, including delinquent special assessments secured by residential PACE liens, are to receive proceeds in accordance with the priorities established above.²⁰

Residential PACE administrators

License

The bill prohibits a person from acting as a residential PACE administrator in Ohio without first obtaining a license from the Superintendent of Financial Institutions. An applicant applying for a residential PACE administrator license must provide all of the following information in a form prescribed by the Superintendent:

- The full name of each natural person who is a principal of the administrator;
- The mailing address, which may not be a post office box, the telephone number, and, if applicable, the email address of the primary office of the administrator and any branch offices in Ohio;
- Consent to the jurisdiction of the courts of Ohio;

¹⁹ R.C. 1356.19.

²⁰ R.C. 1356.03.

- The name and address of the registered agent in Ohio authorized to accept service of process on behalf of the applicant;
- Disclosure of all of the following:
 - 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;
 - 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 owning more than 5% interest in the administrator, unresolved or otherwise, filed or otherwise commenced within the preceding ten years;
 - Whether the applicant, 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;
 - Whether authority granted to the applicant to operate in any other state has ever been denied, revoked, or suspended;
 - Any other information and material as the Superintendent may require.

A residential PACE administrator license expires on December 31 of the year the license was issued and is renewable on January 1 of each year after that date.

A person whose application is properly and timely filed and who has not received notice of denial of renewal is considered approved for renewal, and the person may continue to transact business as a residential PACE administrator whether or not the renewed license has been received on or before January 1 of the renewal year. An application for renewal of a license is considered timely filed if received by the Superintendent by December 15 immediately preceding the expiration of the license. An application for renewal is considered properly filed if made upon forms duly executed and sworn to, accompanied by fees prescribed below, and containing any information that the Superintendent requires.

A person who fails to make a timely application for renewal of a license and who has not received the renewal license as of January 1 of the renewal year is unlicensed until the renewal license has been issued by the Superintendent and is received by the person.

Application for the renewal of an existing license must contain the request for renewal and any changes to the information required for an initial license.

A licensee ceasing an activity or activities regulated by the bill and desiring to no longer be licensed must simultaneously inform the Superintendent in writing and surrender the license and all other symbols or indicia of licensure. The licensee must include a plan for the withdrawal from regulated business, including a timetable for the disposition of the business.

The following fees must be paid to the Superintendent:

- For an initial license, \$1,000;
- For a renewal license, \$500.

The fees must be paid to the Superintendent and be deposited by the Superintendent into the State Treasury to the credit of the PACE Loan Fund, which the bill creates. The fund may be expended or obligated by the Superintendent for the defrayment of the costs of administration of the bill's provisions by the Division of Financial Institutions. All actual and necessary expenses incurred by the Superintendent, including any services rendered by the Department of Commerce for the Division's administration of the bill's provisions, must be paid from the fund.

A residential PACE administrator must file a report on March 31 each year on forms supplied by the Superintendent and containing information required by the Superintendent.²¹

Surety bond

The bill requires a residential PACE administrator to obtain and maintain in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in Ohio. The bond must be in favor of the Superintendent and in the penal sum of at least \$100,000 as described below. The term of the bond must coincide with the term of the license. The administrator must file a copy of the bond with the Superintendent. The bond must be available for the recovery of expenses, fines, and fees levied by the Superintendent and for the benefit of any borrower injured by a violation by an administrator or any employee of the administrator of any provision of the bill.

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

Under the bill, a residential PACE administrator must maintain or increase its surety bond to reflect the total dollar amount of the residential PACE loans made in Ohio in the preceding year. A licensee may decrease its surety bond if the surety bond required is less than the amount of the surety bond on file with the Department of Commerce. The bond must be in one of the following amounts:

- If the amount of the residential PACE loans is \$5 million or less, \$100,000.
- If the amount of the residential PACE loans is greater than \$5 million and up to \$10 million, \$125,000.
- If the amount of the residential PACE loans is greater than \$10 million and up to \$25 million, \$150,000.

²¹ R.C. 1356.02.

- If the amount of the residential PACE loans is greater than \$25 million, \$200,000.²²

Disclosures and annual statement

The bill requires a residential PACE administrator to provide two disclosures and an annual statement to a homeowner as follows.

First, an administrator must provide the following verbatim disclosure to a homeowner on a one-page document, separate from any other, and in 14-point type (the following example is 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 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 tax foreclosure if you fall behind or cannot meet the tax payments necessary to repay the loan.
4. This PACE loan will increase your property tax bill by [\$ annual amount] per year for [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 your mortgage or get a loan modification. It may also delay a closing on a sale.
7. To learn about the benefits and risks of a PACE loan, you might consider talking to a lawyer.

²² R.C. 1356.09.

An administrator must give this disclosure to the homeowner five days prior to the homeowner's execution of the contract at the first in-person encounter with the homeowner at which a loan or the installation of energy measures to be financed by the loan is discussed.

Second, the administrator must provide, prior to execution of the contract, a disclosure that is approved by the Superintendent that includes information specified by the Superintendent. The bill requires the disclosure to include all of the following:

- The total amount of the special assessment;
- The annual special assessment payments and a payment schedule;
- The term of the special assessment;
- The interest rate and annual percentage rate of the residential PACE loan, and all applicable fees;
- The improvements to be installed;
- That no penalty will be assessed or collected for prepayment of the special assessment;
- That any potential utility savings are not guaranteed and may not be equal to or greater than the special assessment payments or total special assessment amount;
- That the payments will be added to the homeowner's property tax bill;
- That if tax payments are escrowed, the amount by which escrowed property taxes will increase.

In addition to the above two disclosures, a residential PACE administrator must provide an annual statement of the status of the residential PACE loan to the homeowner, including, at a minimum, the amount paid to date and the remaining balance of the loan.

The bill prohibits any other disclosures or papers from being proffered with these disclosures and annual statement. The administrator must ensure that the contact information provided in the disclosure is up to date.

All legally required and voluntary disclosures made in connection with a residential PACE loan must be provided in the primary language of the homeowner, if any of the following applies:

- It is requested by the homeowner;
- The residential PACE loan is advertised in that language;
- 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.²³

²³ R.C. 1356.17.

Compliance with Servicemembers Civil Relief Act

The bill requires a residential PACE administrator to comply with the federal Servicemembers Civil Relief Act.²⁴

Prohibitions

Under the bill, a residential PACE administrator may not do any of the following:

- 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;
- Indicate or imply that the cost-effective energy improvements will pay for themselves or offset or exceed the amount of the residential PACE loan, unless the residential PACE administrator guarantees in writing that the improvements will pay for themselves or offset or exceed the amount of the residential PACE loan, 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;
- Indicate or imply that the residential PACE loan is free, a form of public assistance, or a government program;
- Indicate or imply that the residential PACE loan will be repaid, in whole or in part, by a subsequent homeowner;
- Engage in any false, deceptive, or misleading advertising, act, or practice;
- Use an implementing entity's logo, city seal, or other graphic in marketing materials or representations;
- Steer or otherwise direct a homeowner to a residential PACE loan;
- Offer or provide any tax advice or information, unless the offeror or provider is a tax expert, provided that a residential PACE administrator may do any of the following:
 - Indicate to a homeowner that tax benefits may be available to certain homeowners who obtain residential PACE loans;
 - Direct the homeowner to seek the advice of an expert regarding tax matters related to the residential PACE loan.
- 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;

²⁴ R.C. 1356.16(A) and 50 U.S.C. 3901, *et seq.*

- Engage in practices prohibited under the federal Fair Debt Collection Practices Act of 1977²⁵ while attempting to collect on any account, tax bill, or other indebtedness;
- Enter into any residential PACE loan contract unless both the federal Housing Finance Agency and the Federal Housing Administration will purchase, refinance, or insure mortgages encumbered by subordinate residential PACE liens;
- Violate federal do-not-call or telemarketing restrictions or prohibitions;
- Violate any other state or federal law or rule;
- 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;
- Disclose or permit disclosure to a residential PACE contractor the amount of residential PACE loan financing for which a homeowner is eligible.²⁶

Examination of records; enforcement; discipline

Under the bill, as often as the Superintendent of Financial Institutions considers it necessary, the Superintendent may examine the records of a residential PACE administrator.

The Superintendent may, upon written notice to the residential PACE administrator stating the contemplated action, the grounds for the action, and the residential PACE administrator's reasonable opportunity to be heard on the action in accordance with the Ohio Administrative Procedure Act,²⁷ revoke, suspend, or refuse to renew any license issued under the bill if the Superintendent finds a violation of or failure to comply with any provision of the bill or the rules adopted thereunder, any federal lending law, or any other law applicable to the business conducted under the bill. The Superintendent may also impose a civil penalty not to exceed \$10,000 per violation.

The bill allows the Superintendent to order restitution against persons subject to the bill for violations of the bill.

The Superintendent may issue orders or directives as follows:

- Order or direct persons subject to the bill to cease and desist from conducting business, including immediate temporary orders to cease and desist;
- Order or direct persons subject to the bill to cease any harmful activities or violations of the bill, including immediate temporary orders to cease and desist;

²⁵ 15 U.S.C. 1692, *et seq.*

²⁶ R.C. 1356.16(B) and (C).

²⁷ R.C. Chapter 119.

- Enter immediate temporary orders to cease business under a license if the Superintendent determines that the license was erroneously granted or the licensee is currently in violation of the bill or any rule adopted by the Superintendent;
- Order or direct other affirmative action the Superintendent considers necessary.

Each violation or failure to comply with any directive or order of the Superintendent is a separate and distinct violation or failure.²⁸

Financial examinations and record retention

The bill requires the Superintendent to conduct financial examinations of a residential PACE administrator with the frequency determined by the Superintendent.

Each residential PACE administrator must keep any books, accounts, and records, including electronic records, as will enable the Superintendent to determine whether the administrator is complying with the bill and any rules adopted by the Superintendent.

Every residential PACE administrator must preserve the books, accounts, and records for at least six years after making the final entry on any transaction recorded. Examinations of the books, records, and method of operations conducted under the supervision of the Superintendent are to be done at the cost of the administrator.²⁹

Implementing entities

The bill requires that a residential PACE loan program established by an implementing entity comply with the bill. The program must serve a public purpose and not primarily be for the benefit of private entities or private investors even though private benefit may result incidentally.

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

No implementing entity or residential PACE administrator may do either of the following:

- Provide, offer, or facilitate financing to a homeowner who is not current on mortgage payments or who owes delinquent taxes;
- 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.

Upon completion of a project, the bill requires an implementing entity to provide a homeowner with a certificate stating participation in the program and identify what cost-effective energy improvements have been made with financing program proceeds.

²⁸ R.C. 1356.07.

²⁹ R.C. 1356.08.

Notwithstanding any provision of the Revised Code to the contrary, an implementing entity is required to ensure that financing provided under the bill has all of the following:

- A cost-weighted average maturity not exceeding the useful life of the cost-effective energy improvements installed, as determined by the Superintendent of Financial Institutions. In no event may a term exceed 20 years.
- A principal amount not to exceed either of the following:
 - For a residential PACE loan for energy efficiency improvements only, the lesser of 10% of the true value of the property, as most recently determined by the county auditor, on which the improvements are to be installed or the actual cost of installing the cost-effective energy improvements;
 - 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% of the true value of the property, as most recently determined by the county auditor, on which the improvements are to be installed or the actual cost of installing the cost-effective energy improvements.

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.

The bill prohibits the combined debt of existing mortgages, the residential PACE lien, and all other liens on the qualified residential real property from exceeding 90% of the true value of the property, as most recently determined by the county auditor.³⁰

An implementing entity must inspect all installations and conduct a performance verification of at least 10% of the cost-effective energy improvements financed by the program.³¹

Lastly, a residential PACE loan program must 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.³²

Residential PACE contractor prohibitions

The bill prohibits a residential PACE contractor from commencing work to install cost-effective energy improvements financed with a residential PACE loan prior to the expiration of the rescission period provided in “**Right to rescind**” above. If a contractor violates this provision and the homeowner has rescinded the contract, then all of the following apply:

- The contractor is not entitled to compensation for that work.

³⁰ R.C. 1356.011.

³¹ R.C. 1356.15(D).

³² R.C. 1356.15(E).

- The contractor must restore the property to its original condition at no cost to the homeowner.
- The contractor must immediately and without condition return all money, property, and other consideration given by the homeowner.

The bill also prohibits a residential PACE contractor from charging a homeowner a different price for the cost-effective energy improvements and their installation than the contractor would charge for the same or similar installations that are not financed through a residential PACE loan.³³

Homeowner's best interests

The bill requires residential PACE administrators, residential PACE contractors, subcontractors of the residential PACE contractor, and agents thereof to act in good faith toward and in the best interests of the homeowners.

For the purposes of this provision, 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 of work.³⁴

Homeowner's remedies

Under the bill, any homeowner aggrieved by a person or entity violating the bill is entitled in an action to any of the following:

- Actual, incidental, and consequential damages;
- Statutory damages of either of the following:
 - \$5,000;
 - \$10,000 if the defendant violated any provision under "**Verification of ability to repay**" above or any except the last two of the prohibitions in "**Prohibitions**" above.
- Reasonable attorney's fees;
- Investigative and court costs.

The bill states that these remedies are cumulative, not exclusive, and do not restrict any remedy that is otherwise available to a homeowner at law or in equity.³⁵

³³ R.C. 1356.15(A) through (C).

³⁴ R.C. 1356.20.

³⁵ R.C. 1356.21.

No waiver

The bill provides that the parties to a residential PACE loan contract may not waive any of the rights or requirements set forth or any provision contained in the bill. 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.³⁶

Conforming changes

If a legislative authority decides to establish a PACE loan program, the bill requires the legislative authority to adopt an ordinance specifying that repayments be paid and collected pursuant to the requirements in “**Repayment**” above.³⁷

The bill requires any residential PACE loan administered for a special energy improvement project under the special improvement district law to comply with the bill’s new provisions.³⁸

Lastly, the bill states that the “**Lien priority**” provisions above take precedence over the continuing law provision giving the state the first lien on the lands and lots described in the delinquent lands list.³⁹

HISTORY

Action	Date
Introduced	05-11-22

ANHB0646IN-134/ec

³⁶ R.C. 1356.22.

³⁷ R.C. 717.25.

³⁸ R.C. 1710.15.

³⁹ R.C. 5721.10.