



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 646  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 646's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. Cutrona and Roemer

**Local Impact Statement Procedure Required:** Yes

Shannon Pleiman, Senior Budget Analyst

### Highlights

- Priority of property assessed clean energy (PACE) liens may result in local governments losing foreclosure proceeds that they might otherwise receive.
- A local government may incur implementation and administrative costs if it establishes a residential PACE loan program and enters into residential PACE loan contracts.
- The Department of Commerce's Division of Financial Institutions will incur costs to license and conduct financial examinations of residential PACE administrators. This cost will at least be partially offset by license fees deposited into the PACE Loan Fund created by the bill. The initial license cost is \$1,000 and the annual renewal cost is \$500.

### Detailed Analysis

#### Overview

The bill establishes a regulatory framework that local governments are required to follow if they offer residential property assessed clean energy (PACE) loans to assist property owners with installing and implementing solar, geothermal, or other alternative energy and energy efficiency technologies. Residential PACE loans are extensions of financing offered to pay for the installation of cost-effective energy improvements on homeowners' qualifying residential real property and repayable by homeowners through special assessments. Currently, only commercial PACE programs are offered in the state. The bill also requires the Department of Commerce's Division of Financial Institutions to license and examine residential PACE administrators. Lastly, the bill provides that a PACE lien is subordinate to all previously recorded liens on the property and any first mortgage, regardless of when it is recorded. The fiscal effects of these provisions are discussed in more detail below.

## Residential PACE loan program

The bill allows a local government or local authority designated by the local government (both defined in the bill as an “implementing entity”) under the current laws governing low-cost alternative energy revolving loan programs and special improvement districts to implement and administer residential PACE loan programs. If an implementing entity adopts a residential PACE loan program, it may incur implementation and administrative costs to do so. Under the bill, an implementing entity is required to provide certificates to homeowners on completion of the project and ensure the financing under a residential PACE loan meets certain criteria. Additionally, if an implementing entity enters into a residential PACE loan contract with a homeowner, it must follow several contract requirements outlined in the bill. Among other things, this includes providing written notice of the contract to all servicers of any mortgage or other lien on the homeowner’s property.

It is unclear how many local governments or local authorities in Ohio would implement a residential PACE loan program or enter into residential PACE loan contracts. As mentioned in the “**Overview**,” only commercial PACE programs are available in the state. It appears that there are over 130 commercial PACE programs managed by 20 known entities in the state.<sup>1</sup> Nationally, there are active residential PACE financing programs available in California (10), Florida (4), and Missouri (3).<sup>2</sup> In California, the Legislative Analyst’s Office is aware of two local governments that operate their own PACE programs in that state.

## Possible fiscal consequence of priority of liens

The bill provides that a PACE lien is subordinate to all previously recorded liens on the property and any first mortgage, regardless of when it is recorded. A PACE lien is superior to any lien on the property, other than a first mortgage, that is recorded after the PACE lien. The bill’s lien-priority provision applies notwithstanding any other provision of law. Current law and the bill provide that the state’s property tax lien is generally superior to all other liens. The bill creates a new exception to this general superiority for PACE liens. Consequently, PACE liens appear to be superior to any tax lien recorded after the PACE lien, even though the PACE lien could be enforced in the same manner as tax liens, through tax foreclosure. So local governments may lose some foreclosure proceeds that they might otherwise receive. The amount of any such losses appears indeterminate.

These lien provisions appear to create a situation in which the disposition of foreclosure proceeds is unclear. As indicated above, the bill makes a PACE lien subordinate to an after-recorded first mortgage on the property. A first mortgage lien is generally subordinate to a tax lien. Under the bill, an after-recorded tax lien would be subordinate to a PACE lien, since the bill says that a PACE lien is superior to any lien, other than a first mortgage lien, recorded after the PACE lien is recorded.

---

<sup>1</sup> See the [Interactive Map: Ohio PACE Programs](#), which is available on the Bricker & Eckler Attorneys at Law website: [bricker.com/home](http://bricker.com/home).

<sup>2</sup> See the [Property Assessed Clean Energy Programs](#), which is available on the U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy website: [energy.gov/eere/office-energy-efficiency-renewable-energy](http://energy.gov/eere/office-energy-efficiency-renewable-energy).

## Licensing residential PACE administrators

The Department of Commerce's Division of Financial Institutions will incur some new costs to license and conduct financial examinations of residential PACE administrators. Under the bill, a residential PACE administrator is an entity that the implementing entity contracts to administer all or part of a residential PACE program. The cost incurred by the Division will ultimately depend on the number of residential PACE administrators that are licensed. Based on data from other states, it does not appear that the number of residential PACE administrators will be significant. For example, California has four program administrators licensed and Florida has two approved program administrators.<sup>3</sup>

Any cost incurred by the Division would at least be partially offset by license, examination, and civil penalty revenue. The bill specifies that the initial license cost is \$1,000 and the annual renewal cost \$500. Additionally, the bill requires the financial examinations be done at the cost of the residential PACE administrator. If the Division finds that a residential PACE administrator violated any provisions of the bill, it may assess a civil penalty up to \$10,000 per violation. These revenues will be deposited into the PACE Loan Fund created by the bill.

HB0646IN/lb

---

<sup>3</sup>See the [Property Assessed Clean Energy \(PACE\) Program Administrators](#), which is available on the California Department of Financial Protection & Innovation website: [dfpi.ca.gov/](http://dfpi.ca.gov/). See the [About PACE](#), which is available on the Florida PACE Funding Agency website: [floridapace.gov/](http://floridapace.gov/).