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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3946

02/19/2024 Authored by Carroll and Acomb The bill was read for the first time and referred to the Committee on Climate and Energy Finance and Policy

1.1 A bill for an act
1.2 relating to energy; modifying the commercial property assessed clean energy
1.3 program; amending Minnesota Statutes 2022, sections 216C.435, subdivisions 3a,
1.4 3b, 4, 10, by adding subdivisions; 216C.436, subdivisions 1, 3, 4, 7, 8, 10;
1.5 Minnesota Statutes 2023 Supplement, sections 216C.435, subdivision 8; 216C.436,
1.6 subdivisions 1b, 2.

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

1.8 Section 1. Minnesota Statutes 2022, section 216C.435, subdivision 3a, is amended to read:

1.9 Subd. 3a. Cost-effective Energy improvements. "Cost-effective Energy improvements"
1.10 means:

1.11 (1) any new construction, renovation, or retrofitting of qualifying commercial real
1.12 property to improve energy efficiency that: (i) is permanently affixed to the property; and
1.13 (ii) results in a net reduction in energy consumption without altering the principal source
1.14 of energy, and has been identified or greenhouse gas emissions, as documented in an energy
1.15 audit as repaying the purchase and installation costs in 20 years or less, based on the amount
1.16 of future energy saved and estimated future energy prices or emissions avoided;

1.17 (2) any renovation or retrofitting of qualifying residential real property that is permanently
1.18 affixed to the property and is eligible to receive an incentive through a program offered by
1.19 the electric or natural gas utility that provides service under section 216B.241 to the property
1.20 or is otherwise determined to be a cost-effective an eligible energy improvement by the
1.21 commissioner under section 216B.241, subdivision 1d, paragraph (a);

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

2.1 (4) a solar voltaic or solar thermal energy system attached to, installed within, or
 2.2 proximate to a building that generates electrical or thermal energy from a renewable energy
 2.3 source that has been ~~identified~~ documented in an energy audit or renewable energy system
 2.4 feasibility study ~~as repaying their purchase and installation costs in 20 years or less, based~~
 2.5 ~~on the amount of future energy saved and estimated future energy prices,~~ along with the
 2.6 estimated amount of related renewable energy production.

2.7 Sec. 2. Minnesota Statutes 2022, section 216C.435, subdivision 3b, is amended to read:

2.8 Subd. 3b. **Commercial PACE loan contractor.** "Commercial PACE loan contractor"
 2.9 means a person or entity that installs ~~cost-effective energy~~ eligible improvements financed
 2.10 under a commercial PACE loan program.

2.11 Sec. 3. Minnesota Statutes 2022, section 216C.435, is amended by adding a subdivision
 2.12 to read:

2.13 Subd. 3e. **Eligible improvement.** "Eligible improvement" means one or more energy
 2.14 improvements, resiliency improvements, or water improvements made to qualifying real
 2.15 property.

2.16 Sec. 4. Minnesota Statutes 2022, section 216C.435, subdivision 4, is amended to read:

2.17 Subd. 4. **Energy audit.** "Energy audit" means a formal evaluation of the energy
 2.18 consumption of a building by a certified energy auditor, whose certification is approved by
 2.19 the commissioner, for the purpose of identifying appropriate energy improvements that
 2.20 could be made to the building and including an estimate of the ~~length of time a specific~~
 2.21 ~~energy improvement will take to repay its purchase and installation costs, based on the~~
 2.22 ~~amount of energy saved and estimated future energy prices~~ effective useful life, the reduction
 2.23 of energy consumption, and the related avoided greenhouse gas emissions resulting from
 2.24 the proposed eligible improvements.

2.25 Sec. 5. Minnesota Statutes 2023 Supplement, section 216C.435, subdivision 8, is amended
 2.26 to read:

2.27 Subd. 8. **Qualifying commercial real property.** "Qualifying commercial real property"
 2.28 means a multifamily residential dwelling, a commercial or industrial building, or farmland,
 2.29 as defined in section 216C.436, subdivision 1b, that the implementing entity has determined,
 2.30 after review of an energy audit, renewable energy system feasibility study, water
 2.31 improvement study, resiliency improvement study, or agronomic assessment, as defined in

3.1 section 216C.436, subdivision 1b, can benefit from ~~the installation of cost-effective energy~~
 3.2 installing eligible improvements or land and water improvements, as defined in section
 3.3 216C.436, subdivision 1b. Qualifying commercial real property includes new construction.

3.4 Sec. 6. Minnesota Statutes 2022, section 216C.435, subdivision 10, is amended to read:

3.5 Subd. 10. **Renewable energy system feasibility study.** "Renewable energy system
 3.6 feasibility study" means a written study, conducted by a contractor trained to perform that
 3.7 analysis, for the purpose of determining the feasibility of installing a renewable energy
 3.8 system in a building, including an estimate of the ~~length of time a specific~~ effective useful
 3.9 life, the production of renewable energy, and any related avoided greenhouse gas emissions
 3.10 of the proposed renewable energy system will take to repay its purchase and installation
 3.11 costs, based on the amount of energy saved and estimated future energy prices. For a
 3.12 geothermal energy improvement, the feasibility study must calculate net savings in terms
 3.13 of nongeothermal energy and costs.

3.14 Sec. 7. Minnesota Statutes 2022, section 216C.435, is amended by adding a subdivision
 3.15 to read:

3.16 Subd. 11a. **Resiliency improvement.** "Resiliency improvement" means one or more
 3.17 installations or modifications to eligible commercial real property that are designed to
 3.18 improve a property's resiliency by improving the eligible real property's:

3.19 (1) structural integrity for seismic events;

3.20 (2) indoor air quality;

3.21 (3) durability to resist wind, fire, and flooding;

3.22 (4) ability to withstand an electric power outage;

3.23 (5) stormwater control measures, including structural and nonstructural measures to
 3.24 mitigate stormwater runoff;

3.25 (6) ability to mitigate the impacts of extreme temperatures; or

3.26 (7) ability to mitigate greenhouse gas embodied emissions from the eligible real property.

3.27 Sec. 8. Minnesota Statutes 2022, section 216C.435, is amended by adding a subdivision
 3.28 to read:

3.29 Subd. 11b. **Resiliency improvement feasibility study.** "Resiliency improvement
 3.30 feasibility study" means a written study that is conducted by a contractor trained to perform

4.1 the analysis to: (1) determine the feasibility of installing a resiliency improvement; (2)
 4.2 document the improved resiliency capabilities of the property; and (3) estimate the effective
 4.3 useful life of the proposed resiliency improvements.

4.4 Sec. 9. Minnesota Statutes 2022, section 216C.435, is amended by adding a subdivision
 4.5 to read:

4.6 Subd. 14. **Water improvement.** "Water improvement" means one or more installations
 4.7 or modifications to qualifying commercial real property that are designed to improve water
 4.8 efficiency or water quality by:

4.9 (1) reducing water consumption;

4.10 (2) improving the quality, potability, or safety of water for the qualifying property; or

4.11 (3) conserving or remediating water, in whole or in part, on qualifying real property.

4.12 Sec. 10. Minnesota Statutes 2022, section 216C.435, is amended by adding a subdivision
 4.13 to read:

4.14 Subd. 15. **Water improvement feasibility study.** "Water improvement feasibility study"
 4.15 means a written study that is conducted by a contractor trained to perform the analysis to:
 4.16 (1) determine the appropriate water improvements that could be made to the building; and
 4.17 (2) estimate the effective useful life, the reduction of water consumption, and any
 4.18 improvement in water quality resulting from the proposed water improvements.

4.19 Sec. 11. Minnesota Statutes 2022, section 216C.436, subdivision 1, is amended to read:

4.20 Subdivision 1. **Program purpose and authority.** An implementing entity may establish
 4.21 a commercial PACE loan program to finance ~~cost-effective~~ energy, water, and resiliency
 4.22 improvements to enable owners of qualifying commercial real property to pay for the
 4.23 ~~cost-effective energy~~ eligible improvements to the qualifying real property with the net
 4.24 proceeds and interest earnings of revenue bonds authorized in this section. An implementing
 4.25 entity may limit the number of qualifying commercial real properties for which a property
 4.26 owner may receive program financing.

4.27 Sec. 12. Minnesota Statutes 2023 Supplement, section 216C.436, subdivision 1b, is
 4.28 amended to read:

4.29 Subd. 1b. **Definitions.** (a) For the purposes of this section, the following terms have the
 4.30 meanings given.

5.1 (b) "Agronomic assessment" means a study by an independent third party that assesses
5.2 the environmental impacts of proposed land and water improvements on farmland.

5.3 (c) "Farmland" means land classified as 2a, 2b, or 2c for property tax purposes under
5.4 section 273.13, subdivision 23.

5.5 (d) "Land and water improvement" means:

5.6 (1) an improvement to farmland that:

5.7 (i) is permanent;

5.8 (ii) results in improved agricultural profitability or resiliency;

5.9 (iii) reduces the environmental impact of agricultural production; and

5.10 (iv) if the improvement affects drainage, complies with the most recent versions of the
5.11 applicable following conservation practice standards issued by the United States Department
5.12 of Agriculture's Natural Resources Conservation Service: Drainage Water Management
5.13 (Code 554), Saturated Buffer (Code 604), Denitrifying Bioreactor (Code 605), and
5.14 Constructed Wetland (Code 656); or

5.15 (2) water conservation and quality measures, which include permanently affixed
5.16 equipment, appliances, or improvements that reduce a property's water consumption or that
5.17 enable water to be managed more efficiently.

5.18 (e) "Resiliency" means:

5.19 (1) the ability of farmland to maintain and enhance profitability, soil health, and water
5.20 quality;

5.21 (2) the ability to mitigate greenhouse gas embodied emissions from an eligible real
5.22 property; or

5.23 (3) an increase in building resilience through flood mitigation, stormwater management,
5.24 wildfire and wind resistance, energy storage use, or microgrid use.

5.25 Sec. 13. Minnesota Statutes 2023 Supplement, section 216C.436, subdivision 2, is amended
5.26 to read:

5.27 Subd. 2. **Program requirements.** A commercial PACE loan program must:

5.28 (1) impose requirements and conditions on financing arrangements to ensure timely
5.29 repayment;

6.1 (2) require an energy audit, renewable energy system feasibility study, resiliency
6.2 improvement study, water improvement study, or agronomic or soil health assessment to
6.3 be conducted on the qualifying commercial real property and reviewed by the implementing
6.4 entity prior to approval of the financing;

6.5 (3) require the inspection or verification of all ~~installations and a performance verification~~
6.6 ~~of at least ten percent of the cost-effective energy~~ eligible improvements or land and water
6.7 improvements financed by the program;

6.8 (4) not prohibit the financing of all ~~cost-effective energy~~ eligible improvements or land
6.9 and water improvements not otherwise prohibited by this section;

6.10 (5) require that all ~~cost-effective energy~~ eligible improvements or land and water
6.11 improvements be made to a qualifying commercial real property prior to, or in conjunction
6.12 with, an applicant's repayment of financing for ~~cost-effective energy~~ eligible improvements
6.13 or land and water improvements for ~~that~~ the qualifying commercial real property;

6.14 (6) have ~~cost-effective energy~~ eligible improvements or land and water improvements
6.15 financed by the program performed by a licensed contractor as required by chapter 326B
6.16 or other law or ordinance;

6.17 (7) require disclosures in the loan document to borrowers by the implementing entity
6.18 of: (i) the risks involved in borrowing, including the risk of foreclosure if a tax delinquency
6.19 results from a default; and (ii) all the terms and conditions of the commercial PACE loan
6.20 and the installation of ~~cost-effective energy~~ eligible improvements or land and water
6.21 improvements, including the interest rate being charged on the loan;

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

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

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

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

6.30 (12) require that liability for special assessments related to the financing runs with the
6.31 qualifying commercial real property; and

7.1 (13) prior to financing any improvements to or imposing any assessment upon qualifying
 7.2 commercial real property, require notice to and written consent from the mortgage lender
 7.3 of any mortgage encumbering or otherwise secured by the qualifying commercial real
 7.4 property.

7.5 Sec. 14. Minnesota Statutes 2022, section 216C.436, subdivision 3, is amended to read:

7.6 Subd. 3. **Retail and end use prohibited.** (a) Energy generated by an energy improvement
 7.7 may be included in a community solar garden, but must not be otherwise sold, transmitted,
 7.8 or distributed at retail and ~~may~~ must not provide for end use of the electrical energy from
 7.9 an off-site facility. On-site generation is allowed to the extent provided for in section
 7.10 216B.1611.

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

7.13 Sec. 15. Minnesota Statutes 2022, section 216C.436, subdivision 4, is amended to read:

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

7.15 (1) a cost-weighted average maturity not exceeding the useful life of the energy eligible
 7.16 improvements installed, as determined by the implementing entity, but in no event may a
 7.17 term exceed ~~20~~ 30 years;

7.18 (2) a principal amount not to exceed the lesser of:

7.19 (i) the greater of ~~20~~ 30 percent of the assessed value of the real property on which the
 7.20 improvements are to be installed or ~~20~~ 30 percent of the real property's appraised value,
 7.21 accepted or approved by the mortgage lender; or

7.22 (ii) the actual cost of installing the energy eligible improvements, including the costs of
 7.23 necessary equipment, materials, and labor, the costs of each related energy audit ~~or~~ renewable
 7.24 energy system feasibility study, water improvement study, resiliency improvement study,
 7.25 and the cost of verification of installation; and

7.26 (3) an interest rate sufficient to pay the financing costs of the program, including the
 7.27 issuance of bonds and any financing delinquencies.

7.28 Sec. 16. Minnesota Statutes 2022, section 216C.436, subdivision 7, is amended to read:

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

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

8.2 (2) collect repayments as a special assessment as provided for in section 429.101 or by
 8.3 charter, provided that special assessments may be made payable in up to ~~20~~ 30 equal annual
 8.4 installments.

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

8.9 Sec. 17. Minnesota Statutes 2022, section 216C.436, subdivision 8, is amended to read:

8.10 Subd. 8. **Bond issuance; repayment.** (a) An implementing entity may issue revenue
 8.11 bonds as provided in chapter 475 for the purposes of this section and section 216C.437,
 8.12 provided the revenue bond must not be payable more than ~~20~~ 30 years from the date of
 8.13 issuance.

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

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

8.23 Sec. 18. Minnesota Statutes 2022, section 216C.436, subdivision 10, is amended to read:

8.24 Subd. 10. **Improvements; real property or fixture.** ~~A cost-effective energy~~ An eligible
 8.25 improvement financed under a PACE loan program, including all equipment purchased in
 8.26 whole or in part with loan proceeds under a loan program, is deemed real property or a
 8.27 fixture attached to the real property.