34:1B-374 to 34:1B-382 et al
LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

LAWS OF: 2021 **CHAPTER:** 201

NJSA: 34:1B-374 to 34:1B-382 et al (Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use by municipalities of voluntary special assessments for certain property owners.)

BILL NO: A2374 (Substituted for S1953 (SCS/1R))

SPONSOR(S) Mukherji, Raj and others

DATE INTRODUCED: 1/27/2020

COMMITTEE: **ASSEMBLY:** Environment & Solid Waste
Appropriations

SENATE: Environment & Energy
Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 6/24/2021

SENATE: 6/24/2021

DATE OF APPROVAL: 8/24/2021

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL
(Assembly Committee Substitute (Third Reprint) enacted) Yes

A2374
INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Environment & Solid Waste Appropriations

SENATE: Yes Environment & Energy Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 7/29/2020
8/3/2020
6/24/2021
6/29/2021

S1953 (SCS/1R)

INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT):		Yes	
COMMITTEE STATEMENT:	**ASSEMBLY:**	No	
	SENATE:	Yes	Environment & Energy Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	No	
LEGISLATIVE FISCAL ESTIMATE:	Yes	6/29/2021
VETO MESSAGE:	No	
GOVERNOR'S PRESS RELEASE ON SIGNING:		Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or mailto:refdesk@njstatelib.org

REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	Yes

Daniel J. Munoz, 'New state programs aim to slash costs for office energy, environment upgrades', NJBIZ (online), 25Aug 2021

RH/CL

§§1-9 -
C.34:1B-374 to
34:1B-382
§15 - Note

P.L. 2021, CHAPTER 201, ***approved August 24, 2021***
Assembly Committee Substitute ***(Third Reprint)*** for
Assembly, No. 2374

AN ACT concerning the implementation of renewable energy and energy efficiency systems and water conservation, flood and hurricane resistance projects, energy storage, and microgrids, supplementing Title 34 of the Revised Statutes, and amending P.L.1960, c.183 and P.L.2011, c.187.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) The Legislature finds and declares it to be the public policy of this State that:

a. Investing in water conservation, stormwater management, renewable energy, energy efficiency, and flood and hurricane mitigation improvements to real property is a critical component in conserving natural resources and mitigating the effects of floods and hurricanes;

b. The up-front costs of retrofitting properties with these improvements are often a barrier to investing in such improvements, and the additional cost of meeting [2]and exceeding[2] new code requirements in connection with new construction is a deterrent to the investments;

c. Recent studies have demonstrated that the existing financing options for these projects have not made them sufficiently available to property owners and developers;

d. Property assessed clean energy ("PACE") financing, in which repayment is made by way of a special assessment on the real property to which the improvement [2], including new construction upon previously unimproved real property,[2] is made, is an innovative way for property owners to finance or refinance renewable energy, energy and water efficiency, and other eligible improvements which, in turn, saves a significant sum in utility costs or insurance premiums, creates jobs, stimulates local economies, reduces greenhouse gas emissions, and improves the [2]**[**safely**]** safety[2] and quality of the building stock;

e. To date, PACE programs for commercial properties ("C-PACE") operate in [2]more than[2] 24 other states and the District of

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly AAP committee amendments adopted July 27, 2020.
[2]Senate SEN committee amendments adopted June 15, 2021.
[3]Senate SBA committee amendments adopted June 21, 2021.

Columbia, and they have facilitated more than ²[$1.5] $2² billion in investment in over 2,100 C-PACE projects;

f. C-PACE financing will enable New Jersey municipalities to contribute toward their goals of community sustainability and reducing greenhouse gas emissions and energy consumption, and will provide a valuable service to the citizens of their communities; and

g. C-PACE financing serves a valid public purpose and enactment of P.L. , c. (C.) (pending before the Legislature as this bill) is expressly declared to be in the public interest.

2. (New section) As used in sections 1 through 9 of P.L. , c. (C.) (pending before the Legislature as this bill):

²[“Administration agreement” means an agreement between the authority and a participating municipality defining the obligations of a municipality to participate in the Garden State C-PACE program, including the requirement that the participating municipality levy, bill, collect, remit, and enforce a C-PACE assessment.]²

“Assignment agreement” means an agreement in which a participating municipality assigns a C-PACE assessment ²[agreement]² to a capital provider, its designee, successor or assign.

“Authority” means the New Jersey Economic Development Authority.

²“Authorized municipality” means a municipality with a population that, as of the launch date, is in the top third of municipalities in the State in terms of population, according to the most recent American Community Survey published by the United States Census Bureau.²

“Capital provider” means:

a. an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R.230.501 through 230.508) or Rule 144A (17 C.F.R.230.144A) of the federal “Securities Act of 1933” (15 U.S.C. s.77a et seq.), as amended;

b. the trustee or custodian of a trust or custody arrangement which provides that each beneficial owner of interests shall be an accredited investor or qualified institutional buyer;

c. a public entity; ²[or]²

d. a special purpose securitization vehicle for the sale and transfer of securities, which is restricted to those persons described in subsections a. or b. of this definition ²; or

e. a commercial lending institution chartered by a state or the federal government, including, without limitation, a savings and loan association, a credit union, or a commercial bank² .

“C-PACE” means commercial property assessed clean energy.

“C-PACE assessment” means a local improvement assessment, in accordance with chapter 56 of Title 40 of the Revised Statutes, imposed by a participating municipality on a property, with the consent of the owner of the property, ²and determined based upon

either the existing use of a property or the contemplated use of unimproved property upon completion of new construction,[2] as a means of securing financing provided pursuant to section 9 of P.L. , c. (C) (pending before the Legislature as this bill) to finance a C-PACE project at the property, payments in respect of which assessment are collected by the participating municipality and remitted to the entity that provided the financing or its designee.

"C-PACE assessment agreement" means an agreement between a participating municipality and a property owner in which the property owner agrees to the imposition of a C-PACE assessment on the property benefited by a C-PACE project within the municipality, and [2][by] in[2] which the participating municipality agrees to levy, bill, collect, remit, and [2], to the extent necessary,[2] enforce the C-PACE assessment.

"C-PACE project" means:

a. the acquisition, construction, [2][lease,][2] installation, [2][or][2] modification [2], or, in the discretion of the authority and in accordance with guidelines adopted by the authority, entry into a capital lease[2] of an energy efficiency improvement or renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction [2][of the improvements] upon previously unimproved real property[2] , within a participating municipality [2], provided that, on the basis of supplemental program guidelines to be published by the authority within 90 days following the launch date, a qualified professional attests that such new construction exceeds the minimum standards of the local and State building codes otherwise applicable to the property[2] ;

b. [2]at the discretion of, and in accordance with guidelines adopted by, the authority,[2] a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or

c. [2]at the discretion of, and in accordance with guidelines adopted by, the authority,[2] a power purchase agreement with respect to a renewable energy system affixed to a property.

"Direct financing" means financing for a C-PACE project pursuant to a financing agreement entered into between a capital provider and a property owner.

"Electric vehicle charging infrastructure" means equipment designed to deliver electric energy to [2][an] a battery[2] electric vehicle or a plug-in hybrid vehicle. [2]["][2]

"Energy efficiency improvement" means an improvement to reduce energy consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy,

including, but not limited to: air sealing; installation of insulation; installation of energy-efficient electrical, heating, cooling, or ventilation systems; building modifications to increase the use of daylight; energy efficient windows, doors, and glass; installation of energy or water controls or energy recovery systems; and installation of efficient lighting equipment.

"Finance" or "financing" means the investing of capital in accordance with section 9 of P.L. , c. (C.) (pending before the Legislature as this bill), including [2], on the basis of supplemental program guidelines to be published by the authority within 90 days following the launch date,[2] the refinancing of an investment in an existing C-PACE project.

"Flood resistant construction improvement" means an improvement that mitigates the likelihood of flood damage, including, but not limited to, the installation of break-away walls and building elevation alterations.

"Garden State C-PACE program" means the program established by the authority pursuant to sections 4 and 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

[2]"Garden State program agreement" means an agreement between the authority and a participating municipality defining:

a. the obligations of a municipality to participate in the Garden State C-PACE program, including the requirement that the participating municipality levy, bill, collect, remit, and enforce a C-PACE assessment; and

b. the obligations, if any, that the authority may undertake (1) with respect to the remittance of C-PACE assessments to capital providers if the remittance is authorized by regulations adopted by the Local Finance Board pursuant to section 38 of P.L.2000, c.126 (C.52:27D-20.1) and requested by the participating municipality, and (2) to review and approve the participation of individual capital providers or financings in the Garden State C-PACE program. Neither the execution by the authority of a Garden State program agreement with a municipality nor its exercise of its rights or performance of its duties thereunder shall be considered "authority financial assistance" as that term is defined in section 1 of P.L.1979, c.303 (C.34:1B-5.1).[2]

"Hurricane resistant construction improvement" means an improvement that enables a component of a structure to be in compliance with the standards for a "wind-borne debris region" adopted pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or into compliance with a successor standard under that code.

[2]"Launch date" means the date upon which the authority has taken all of the actions specified in subsection c. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), other than any actions that are expressly required by P.L. , c. (C.) (pending

before the Legislature as this bill) to be taken within 90 days following the launch date.[2]

"Local C-PACE program" means a program established by [2]**[**a**]** an authorized[2] municipality [2]or a county[2] pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Local C-PACE program ordinance" means an ordinance adopted by [2]**[**a**]** an authorized[2] municipality [2]or a county[2] , and approved by the authority pursuant to section 7 of P.L. , c. (C.) (pending before the Legislature as this bill), to establish a program within its jurisdiction pursuant to subsection b. of section 5 and subsection a. of section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Microgrid" means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the electric distribution system and that connects and disconnects from the electric distribution system to enable it to operate when both connected to, or independent of, the electric distribution system.

"Notice of assessment" means the document filed with the county recording officer in the county in which [2]**[**the**]** a[2] property is located, [2]**[**for a specific property that**]** which[2] notifies prospective holders of an interest in the property that a C-PACE assessment lien has been placed on the property.

"Opt-in ordinance" means an ordinance adopted by a municipality by which it authorizes its participation in the Garden State C-PACE program and authorizes the municipality to enter into [2]**[**an administration**]** a Garden State program[2] agreement with the authority.

"Participating municipality" means [2]**[**a municipality that**]**[2] :

a. [2]a municipality that[2] adopts an opt-in ordinance and executes [2]**[**an administration**]** a Garden State program[2] agreement; or

b. [2]an authorized municipality that[2] adopts an opt-in ordinance, executes [2]**[**an administration**]** a Garden State program[2] agreement, and adopts a local C-PACE program ordinance [2]and local C-PACE program guidelines approved by the authority[2] .

"Private entity" means a corporation, limited liability company, partnership, trust, or any other form of private organization, including but not limited to a "related competitive business segment of a public utility holding company," or a "related competitive business segment of an electric public utility or gas public utility," as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), so long as the organization is not subject to the jurisdiction of the Board of Public Utilities.

"Program guidelines" means:

a. any program-related rules or documents, or both, [2]**[**other than the uniform assessment documents,**]**[2] prepared and published by the authority that apply to the Garden State C-PACE program; or

b. any program-related rules or documents, or both, [2][other than the uniform assessment documents,][2] prepared and published by [2][a participating] an authorized[2] municipality [2]or a county, and approved by the authority,[2] that apply to [2][its][2] local C-PACE [2][program,] programs[2] pursuant to [2]paragraph (3) of[2] subsection [2][c.] b.[2] of section [2][5] 6[2] of P.L. , c. (C) (pending before the Legislature as this bill).

"Project costs" means costs associated with a C-PACE project and shall include: direct costs, including but not limited to, equipment, materials, and labor related to the purchasing, constructing, installing, modifying, or acquiring a C-PACE project; indirect costs, including, but not limited to, expenses and fees of engineers, architects, and other professionals, inspection fees and permits, warranties and pre-paid maintenance contracts; program fees; and financing costs of a capital provider, including, but not limited to, origination fees, prepaid interest and payment reserves, closing costs, counsel fees, trustee or custodian fees, recording fees, and other financing charges [2], except that the authority may implement an alternative definition of "project costs" in its program guidelines in connection with the financing of new construction[2] .

"Property" means industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments as defined in section 3 of P.L.1977, c.419 (C.45:22A-23); and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions, within a participating municipality upon which a C-PACE assessment is imposed at the request of a property owner in connection with a C-PACE project.

"Property owner" means [2][all of the owners] an owner[2] of a property within a participating municipality who [2][consent] consents[2] to a C-PACE assessment being imposed on the property [2][, as well as the lessee of a property owned by a governmental entity or the lessee under a ground lease on a property whose legal owner consents in writing to a C-PACE assessment being imposed on the leasehold][2] .

"Renewable energy system" means an improvement by which electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, biomass, or wind energy, together with the other fuels and energy sources that the authority, after consultation with the Board of Public Utilities, may determine pursuant to program guidelines prepared and published pursuant to subsection c. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Solar renewable energy certificate" means the same as defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Stormwater management system" means the same as defined in section 3 of P.L.2019, c.42 (C.40A:26B-3).

[2]"Transition renewable energy certificate" means a certificate issued by the Board of Public Utilities or its designee, under the solar energy transition incentive program, which is designed to transition between the solar renewable energy certificate program and a solar successor incentive program to be developed by the Board of Public Utilities pursuant to P.L.2018, c.17 (C.48:3-87.8 et al.).[2]

"Uniform assessment documents" means a uniform C-PACE assessment agreement, assignment agreement, and notice of assessment, a model lender consent to a C-PACE assessment pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), and any other uniform or model documents prepared by the authority and used in the Garden State C-PACE program and local C-PACE programs, except that the authority shall not mandate a uniform financing agreement, which shall be supplied by the capital provider for direct financing.

"Water conservation improvement" means an improvement that reduces water consumption, increases the efficiency of water use, or reduces water loss.

3. (New section) a. [2](1)[2] No later than 18 months after the [2][authority establishes the Garden State C-PACE program] launch date[2] and annually thereafter, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report describing the implementation and operation of the Garden State C-PACE program [2][and any local C-PACE programs][2] , including information relating to any administrative costs, the number of C-PACE projects, the location of C-PACE projects, and the amount of financing issued for C-PACE projects [2]under the Garden State C-PACE program.

(2) No later than 18 months after an authorized municipality or a county establishes a local C-PACE program pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill), and annually thereafter, the municipality or county shall prepare and submit to the Governor, the authority, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, a report describing the implementation and operation of its local C-PACE program, including information relating to any administrative costs, the number of C-PACE projects, the location of C-PACE projects, and the amount of financing issued for C-PACE projects under its local C-PACE program[2] .

b. [2](1)[2] No later than five years after the [2][authority establishes the Garden State C-PACE program] launch date[2] , the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE

program [2][and any local C-PACE programs][2] . The report shall evaluate the Garden State C-PACE program, including a review of foreclosure rates and any other factors the authority deems appropriate. The report may also identify and recommend legislative changes to P.L. , c. (C.) (pending before the Legislature as this bill). [2]The report shall include an assessment of whether the costs incurred in implementing the Garden State C-PACE Program are an effective means of facilitating the financing of projects.

(2) No later than five years after an authorized municipality or a county establishes a local C-PACE program pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill), the municipality or county shall prepare and submit to the Governor, the authority and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, a report that reviews and assesses implementation of the local C-PACE program. The report shall evaluate its local C-PACE program, including a review of foreclosure rates and any other factors the authority deems appropriate. The report may also identify and recommend legislative changes to P.L. , c. (C.) (pending before the Legislature as this bill).[2]

c. The authority shall post all reports prepared [2]by the authority[2] pursuant to this section on its Internet website. [2]Each authorized municipality and each county that has established a local C-PACE program shall post all reports prepared by it pursuant to this section on its Internet website.[2]

4. (New section) a. The authority shall establish a Garden State C-PACE program to facilitate the [2][direct][2] financing of C-PACE projects in municipalities that adopt an opt-in ordinance. The Garden State C-PACE program shall consist of [2][, among other things,][2] the development of uniform assessment documents [2]and program guidelines[2] for the [2][direct][2] financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance [2], subject to the approval of the authority,[2] for a C-PACE assessment to be imposed on properties within the municipality, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby.

b. The authority may contract with [2], and set the compensation of,[2] one or more third-party administrators [2], whether private, public or quasi-public, or for-profit or not-for-profit,[2] to assist the authority in its implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. The authority may delegate any duties under the program to

one or more third-party administrators, provided that ²the² authority shall not delegate its responsibility for general oversight of the Garden State C-PACE program.

²c. The authority may enter into a memorandum of agreement with one or more State government agencies or instrumentalities whereby any of the powers the authority may exercise or responsibilities it must fulfill pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) may be exercised or fulfilled, as the case may be, by such agency or instrumentality, and any fund that may be used for administrative expenses by the authority may be used by such agency or instrumentality in exercising such powers or fulfilling such responsibilities.

d. The authority may establish a loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by capital providers providing direct financing, in order to improve the availability and financial terms of such financing of C-PACE projects for property owners.²

5. (New section) a. Within ²[180] 270² days after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the authority shall establish the Garden State C-PACE program by publishing on its Internet website:

(1) uniform assessment documents;

(2) a model opt-in ordinance;

(3) Garden State C-PACE program guidelines ²adopted pursuant to subsection c. of this section² ; and

(4) ²a description of² the process by which a ²county or an authorized² municipality applies to the authority for approval of a local C-PACE program ordinance.

²The Garden State C-PACE program shall not be operational and available for the participation of capital providers, municipalities and property owners until the authority has taken all of the actions required by this subsection.²

b. The model opt-in ordinance, as well as any local C-PACE program ordinance, shall prescribe ²a subset of the² criteria for qualifying a C-PACE project for a C-PACE assessment ²[and shall include] , including² the following ²[requirements]² :

(1) financing recipients shall be the legal or beneficial owners of the property or duly authorized by the legal or beneficial owners of the property, there shall be no defaults on any mortgage loans on the subject property, all tax payments ², charges, and assessments² with respect to the property shall be current, the legal or beneficial owners of the property shall not be ²[not]² subject to any bankruptcy proceeding, and the subject property shall not be ²[not]² the subject of a bankruptcy proceeding;

(2) the ²[aggregate] principal² amount of ²[all] the² C-PACE ²[assessments plus the outstanding balance due on all] assessment, when combined with² mortgage ²[loans] and other lien obligations² on a property shall not exceed ²[95] 90² percent of the ²appraised² value of the property after including the value created by the C-PACE project;

(3) ²[the determination of value of a property for purposes of qualifying for a C-PACE assessment shall be based on of any of the following:

(a) the value of the property as determined by the assessor;

(b) the market value of the property as estimated in a broker price opinion or comparative market analysis by a real estate broker or managing broker; or

(c) the as-complete or stabilized prospective market value of the property as estimated in an appraisal report prepared or co-signed by a licensed real estate appraiser within at least 24 months of the application for financing;

(4)]² the maximum duration of a C-PACE assessment ², which shall be determined pursuant to the provisions of paragraph (6) of subsection c. of this section,² shall not exceed the weighted average useful life of the improvements in the C-PACE project or 30 years, whichever is less;

²[(5)] (4)² the amount of ²the² C-PACE assessment for a property shall be a specific amount, and the terms of repayment of direct financing shall be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment in paragraph ²[(4)] (3)² of this subsection; and

²[(6)] (5)² a property owner seeking a C-PACE assessment shall receive written consent of the existing mortgage holders on the property prior to the closing of the financing.

c. ²Pursuant to the purposes and objectives outlined in P.L. , c. (C.) (pending before the Legislature as this bill), and with respect to the responsibilities of overseeing and implementing the Garden State C-PACE program, the authority shall develop, in consultation with the Division of Local Government Services in the Department of Community Affairs, program guidelines governing the terms and conditions under which financing may be made available under the Garden State C-PACE program. Any amendments to the Garden State C-PACE program guidelines shall require the approval of the authority's board of directors.

Pursuant to the purposes and objectives outlined in P.L. , c. (C.) (pending before the Legislature as this bill), and with respect to the responsibilities of overseeing and implementing a local C-PACE program, a county or authorized municipality shall develop program guidelines governing the terms and conditions under which financing may be made available under the local C-PACE program. The program guidelines, and any amendments thereto, for a local C-

PACE program shall be consistent with the Garden State C-PACE program guidelines and the requirements set forth in P.L. , c. (C.) (pending before the Legislature as this bill) for C-PACE projects and financing, and shall be subject to approval by the authority pursuant to subsection a. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill).[2]

The Garden State C-PACE program guidelines and any local C-PACE program guidelines [2][authorized by resolution of the governing body of a participating municipality][2] shall include, but not be limited, to [2][the following minimum procedures and requirements][2] :

(1) a uniform project application, uniform application requirements, including uniform application documents; and the procedures for a property owner to obtain approval of a C-PACE project and a capital provider to finance a C-PACE project;

(2) minimum standards for a C-PACE project to qualify for C-PACE financing;

(3) eligibility criteria for a property owner and property to qualify for a C-PACE assessment; [2][and][2]

(4) [2][rules] the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the Garden State C-PACE program and local C-PACE programs and the maximum permitted amount of a financing based on a property's value and other characteristics;

(5) a requirement that all existing mortgage lien holders on a property be given notice prior to a C-PACE assessment and lien being filed in connection with that property, and that all property owners receive consent of the existing mortgage holders on the property;

(6) a requirement that the term of a financing be no longer than the forecast life of the improvements, which shall be calculated on a blended average basis taking account of the relative values of the fixed assets included in the C-PACE project, except that the authority may establish alternative criteria for establishing the maximum term of a financing for a C-PACE project that consists of new construction;

(7) within 90 days following the launch date with respect to the Garden State C-PACE program guidelines only, supplemental program guidelines[2] for refinancing projects completed prior to the submission of a project application for a C-PACE assessment [2]and for the use of the Garden State C-PACE program in connection with the financing of new construction upon previously unimproved real property[2] .

[1][The provisions of the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), shall not apply to the preparation, publication, or implementation of the uniform assessment documents or the program guidelines of the Garden State C-PACE program or a local C-PACE program.][1]

d. [2][Upon recordation of the notice of assessment and C-PACE assessment agreement in the land records of the property] Subject to the written consent of existing mortgage holders, the form of which

shall be determined by the authority in its uniform assessment documents adopted pursuant to subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill)[2] , the C-PACE assessment shall be a single, continuous first lien on the property on and after the date of recordation [2][. The] of the C-PACE assessment agreement. A property with delinquent taxes, charges, or assessments shall not be eligible for a C-PACE assessment. Upon recordation of the C-PACE assessment agreement in the land records of the county in which the property is located,[2] the lien thereof shall be perfected for all purposes in accordance with law, and the lien shall be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances thereon, [2]except subsequent taxes, charges, or assessments,[2] without any additional notice, recording, filing, continuation filing, or action, until payment in full of the C-PACE assessment, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any other proceeding which does not impair the substantial rights of the owner or owners or other person or persons having a lien upon or interest in any the real estate. Any confirmation of the amount of the C-PACE assessment by the [2]applicable municipality's[2] governing body or by [2][the] a[2] court shall be considered as determining the amount of the existing lien and not as establishing the lien. All C-PACE assessments shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

e. A C-PACE assessment shall be treated as a municipal lien rather than a contractual lien for all purposes of law.

f. Funds to finance a C-PACE project may be disbursed to, or for the benefit of, the property owner at execution of the C-PACE assessment agreement, or may be disbursed in installments over time. The funds shall not constitute public funds, and shall not be subject to the laws governing public funds, including, but not limited to, laws regarding the receipt, expenditure, deposit, investment, or appropriation of the same. Payments of [2]the[2] C-PACE [2][assessments] assessment[2] shall commence as set forth in the C-PACE assessment agreement. To the extent that upon completion of the C-PACE project, funds remain that have not been disbursed to the property owner, those funds on hand shall be used to reduce the amount of the C-PACE assessment in accordance with the C-PACE assessment agreement.

g. Except as provided in this subsection, if any payment of a C-PACE assessment is not made [2][within 10 days after the time][2] when that payment shall have become due, or later, consistent with any grace period provided or extended by a participating municipality for

the payment of property tax bills [2]as may be permitted or required by law[2] , interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the participating municipality [2][, and] . Notwithstanding any other provision of law, such statutory interest shall be in addition to any accrued interest and any amount fixed as a penalty for delinquency pursuant to the financing agreement between the property owner and the capital provider. All such amounts[2] shall be collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the participating municipality enforces collection of its unpaid property taxes through accelerated tax sales. The proceeds of the sale shall also pay the outstanding [2]past unpaid amounts of the[2] C-PACE [2][assessments] assessment[2] . However, the [2]remaining[2] balance [2][due] not delinquent[2] on a C-PACE assessment shall not be subject to acceleration or extinguishment in the event of a default in payment. [2]Any statutory interest collected by the municipality on a delinquent C-PACE assessment pursuant to this subsection shall be retained by the municipality. Any accrued interest, or any amount fixed as a penalty for delinquency, pursuant to the financing agreement between the property owner and the capital provider shall be remitted to the capital provider. If the property owner is delinquent on a C-PACE assessment as well as delinquent on taxes, charges, or other assessments, any payment shall be applied towards any and all such other delinquencies before being applied to any delinquent C-PACE assessment.[2] Notwithstanding any other provision of law, in the event that any lien on the property shall be exposed to tax sale, pursuant to the "tax sale law," R.S.54:5-1 et seq., and [2][any the lien][2] is struck off and sold to the participating municipality, the C-PACE assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances [2][thereon] , except subsequent taxes, charges, or other assessments[2] , and provided that, notwithstanding the obligations of a participating municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5- 53.1), while the participating municipality holds the lien or owns the property, the participating municipality shall not be responsible for or required to make any payment [2]from its treasury or any other source[2] in furtherance of or to satisfy the C-PACE assessment. [2]A municipality shall not bear any other responsibility in furtherance or satisfaction of a C-PACE assessment, except that a municipality may be compelled to enforce a lien through an action to foreclose.[2] In the event of a taking of the property by eminent domain or condemnation, the C-PACE assessment may be accelerated or extinguished, at the election of the capital provider, provided the capital provider is compensated [2]in accordance with the provisions of the "Eminent Domain Act of 1971,"

P.L.1971, c.361 (C.20:3-1 et seq.),[2] by the governmental entity utilizing eminent domain or condemnation for the balance due on the unpaid C-PACE assessment and any interest, penalties, or other charges related thereto.

h. (1) C-PACE assessments shall be assigned directly by the participating municipality, and any assignee thereof, as security for financing from a capital provider to finance C-PACE projects. Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the participating municipality's right, title, and interest in and to the C-PACE assessment, except for its obligations to bill, collect, remit, and enforce C-PACE assessments as set forth in the assignment agreement. The proceeds of a C-PACE assessment shall be considered "special revenues" owned by the capital provider pursuant to chapter 9 of the federal bankruptcy code.

(2) C-PACE assessments assigned as provided hereunder shall not be included in the general funds of the participating municipality, or be subject to any laws regarding the receipt, deposit, investment, or appropriation of public funds, and shall retain such status notwithstanding enforcement of the assessment by the participating municipality or assignee as provided herein. In the case of a participating municipality that is otherwise subject to tax or revenue sharing pursuant to law and which assigns C-PACE assessments as set forth in this section, the C-PACE assessments shall not be considered part of the tax or revenue sharing formula or calculation of municipal revenues for the purpose of determining whether that participating municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool. However, the redemption of any delinquent and unpaid C-PACE assessments, including any interest, penalties, or other charges related thereto, shall be paid no later than on the first available tax bill after the property has been sold after an action to foreclose the right of redemption.

i. The provisions of the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), shall not apply to the preparation, publication, or implementation of the uniform assessment documents or the program guidelines of the Garden State C-PACE program or a local C-PACE program.

6. (New section) a. [2][A] An authorized[2] municipality that has adopted an opt-in ordinance may also establish a local C-PACE program to facilitate the financing of C-PACE projects in that [2]authorized[2] municipality. [2]A county may also establish a local C-PACE program pursuant to a local C-PACE program ordinance to facilitate the financing of C-PACE projects in participating municipalities located in that county that have adopted an opt-in ordinance. A local C-PACE program ordinance adopted by a county shall establish a program for the benefit of municipalities located within the county, but participating municipalities shall remain responsible for the process of levying, billing, collecting, remitting,

and enforcing the C-PACE assessment.[2] In a [2]county or authorized[2] municipality that has established a local C-PACE program pursuant to a local C-PACE [1]⟦Program⟧ program[1] ordinance, any C-PACE projects in that [2]authorized[2] municipality [2]or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance,[2] may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established [2], or is located in a county that has not established,[2] a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only.

b. Notwithstanding the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.), or any other law, to the contrary, a [2]county or authorized[2] municipality seeking to establish and implement a local C-PACE program shall adopt a local C-PACE program ordinance consistent with this section and section 5 of P.L. , c. (C) (pending before the Legislature as this bill). [2]⟦A⟧ An authorized[2] municipality may establish a local C-PACE program through the adoption of a local C-PACE program ordinance if the municipality has entered [2]⟦an administration⟧ a Garden State program[2] agreement with the authority, and obtained approval of the ordinance from the authority pursuant to section 7 of P.L. , c. (C) (pending before the Legislature as this bill). [2]A county may establish a local C-PACE program through the adoption of a local C-PACE program ordinance if the county has obtained approval of the ordinance from the authority pursuant to section 7 of P.L. , c. (C.) (pending before the Legislature as this bill).[2]

In addition to prescribing criteria for qualifying a C-PACE project for a C-PACE assessment pursuant to subsection b. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), [2]⟦the⟧ a[2] local C-PACE program ordinance shall establish the following:

(1) A participating municipality [2]or a county[2] may enter into an agreement with a county improvement authority or it may, pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) enter into contracts with one or more private parties, to assist the participating municipality [2]or county[2] in its implementation and administration, or a combination thereof, of the local C-PACE program. The municipality [2]or county[2] may delegate to one or more private parties or a county improvement authority such matters as the participating municipality determines [2], except that it may not delegate its reporting obligations pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) or its obligation to ensure that its local C-PACE program complies in all respects with P.L. , c. (C.) (pending before the Legislature as this bill) and its local C-PACE program guidelines[2] .

(2) ²[A participating] An authorized² municipality ²or a county² may, in addition to direct financing, offer financing of C-PACE projects through the issuance of bonds pursuant to section 9 of P.L. , c. (C) (pending before the Legislature as this bill).

(3) ²[A participating municipality shall,] A local C-PACE program shall not be operational and available for the participation of capital providers and property owners until the authorized municipality or county, as applicable,² by resolution of the governing body, ²[authorize the preparation of] authorizes² local C-PACE program guidelines pursuant to subsection c. of section 5 of P.L. , c. (C) (pending before the Legislature as this bill) ²[prior to closing a transaction on any C-PACE project under the local C-PACE program.

c. A participating municipality shall submit to the authority an annual report on its C-PACE financings] . The program guidelines for any local C-PACE program shall be consistent with the Garden State C-PACE program guidelines and the requirements set forth in P.L. , c. (C.) (pending before the Legislature as this bill) for C-PACE projects and financing, and shall be subject to approval by the authority pursuant to subsection a. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill). In addition, such program guidelines may include supplemental provisions, provided that they are not inconsistent with the Garden State C-PACE program guidelines and the requirements set forth in P.L. , c. (C.) (pending before the Legislature as this bill)² .

7. (New section) a. ²[A] An authorized² municipality ²or ³a³ county² seeking to establish a local C-PACE program pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill) shall submit an application to the authority for approval. The application to the authority shall consist of the following:

(1) a proposed local C-PACE program ordinance consistent with subsection b. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill); ²[and]²

(2) acknowledgement that the ²authorized² municipality ²or, in the case of a local C-PACE program established by a county, any participating municipality located in that county,² shall use the uniform assessment documents prepared by the authority ²; and

(3) the authorized municipality's or county's proposed program guidelines² .

b. (1) The authority’s review of a ²county's or authorized² municipality’s application shall be limited to confirming that it contains the items required by section 5 of P.L. , c. (C.) (pending before the Legislature as this bill) and is otherwise ²[consistent with] in compliance with the provisions of² P.L. , c. (C.) (pending before the Legislature as this bill). Within ²[30]

60[2] days after receipt of the application, the authority shall either approve or reject the [2][municipality's][2] application. If the authority does not act within [2][30] 60[2] days [2][of] after[2] receipt, the application shall be deemed approved.

(2) If the authority approves the application, or the application is deemed approved in accordance with paragraph (1) of this subsection, the [2]county or authorized[2] municipality may adopt the proposed ordinance establishing a local C-PACE program.

(3) If the authority disapproves the application, it shall provide a detailed explanation to the [2]county or authorized[2] municipality as to the reasons for the disapproval and the changes necessary to bring the proposed local C-PACE program ordinance [2], local C-PACE program guidelines, and other elements of the proposed local C-PACE program[2] into compliance with the requirements of P.L. , c. (C.) (pending before the Legislature as this bill). The [2]county or authorized[2] municipality shall not adopt the proposed local C-PACE program ordinance if the authority disapproves the application, but the [2]county or authorized[2] municipality may submit a revised or new application.

c. The authority [2][shall have no role in a participating] may monitor and oversee a county's or authorized[2] municipality's local C-PACE program [2][except for review and approval of its application pursuant to subsections a. and b. of this section and the collection of information regarding any C-PACE projects undertaken by a local C-PACE program pursuant to subsection a. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill)] to the extent it deems necessary to ensure the continuing compliance of the local C-PACE program with the requirements of P.L. , c. (C.) (pending before the Legislature as this bill). The authority's discretionary monitoring and [3][overseeing] oversight[3] role pursuant to this subsection shall not include the review and approval of C-PACE project applications that are submitted to a local C-PACE program. The authority shall review and approve C-PACE project applications that are submitted to the Garden State C-PACE program, but only an authorized municipality or county that has established a local C-PACE program pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) may review and approve C-PACE project applications that are submitted to a local C-PACE program.

[3][In the event that an authorized municipality or county desires to revise or amend its program guidelines in any other manner, such proposed revisions or amendments shall first be submitted to the authority for its review and approval before the revisions or amendments become effective.][3]

A participating municipality or a county with a local C-PACE program shall incorporate into its local C-PACE program guidelines

any revision or amendment made by the authority to the Garden State C-PACE program guidelines immediately upon the publication of the revision or amendment on the authority's website, unless the authority expressly provides otherwise, based upon a determination that the revision or amendment does not apply to local C-PACE programs. Any such revisions or amendments made by the authority to the Garden State C-PACE program guidelines or incorporated into local C-PACE program guidelines shall not apply retroactively to C-PACE projects that were previously approved pursuant to the Garden State C-PACE program or local C-PACE programs[2] .

[3]In the event that an authorized municipality or county desires to revise or amend its program guidelines in any other manner, such proposed revisions or amendments shall first be submitted to the authority for its review and approval before the revisions or amendments become effective.[3]

8. (New section) a. The authority may charge a [2]county or authorized[2] municipality a fee to review a proposed local C-PACE program ordinance [2]or local C-PACE program guidelines[2] . The fee shall reflect the reasonable and actual cost of the review, provided that the fee shall be a one-time charge not to exceed $5,000.

b. The authority may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program [2][. The fee, inclusive of any fee to compensate a third-party administrator, shall be a one-time fee that shall not exceed one percent of the amount financed, provided that the fee shall not exceed $75,000.

c. A participating municipality may charge the property owner a fee for the review of an application for direct financing in a local C-PACE program. The fee [1], inclusive of any fee to compensate a third-party administrator,[1] shall reflect the reasonable and actual cost of the review and shall be a one-time fee not to exceed one percent of the amount financed, provided that the fee shall not exceed $75,000.

d.] and for its fulfillment of such obligations, if any, that the authority may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the participating municipality. The fee shall reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake.

c.[2] A participating municipality may charge the property owner an annual fee for the billing, collecting, and remitting of [2][the installment payments on]2 the C-PACE assessment. The fee [2][, inclusive of any fee to compensate a third-party administrator,]2 shall reflect the reasonable and actual cost of the billing, collecting, and remitting [2][and, shall be an annual charge not to exceed one-tenth of one

percent]² of the annual ²amounts due for the² C-PACE assessment ²[amount due]² .

9. (New section) a. Financing for the implementation of C-PACE projects, including the refinancing of an investment in an existing improvement that qualifies as a C-PACE project, provided the existing improvement was completed no more than three years prior to the submission of an application to the Garden State C-PACE program or local C-PACE program for the financing, shall be made available to property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment shall be used to repay the financing.

b. The governing body of a ²[participating] county or authorized² municipality may apply to a county improvement authority that issues bonds pursuant to paragraph (3) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or ², in the case of an authorized municipality,² may issue bonds on its own to finance ²[the] project costs for C-PACE projects pursuant to a local C-PACE program or the Garden State C-PACE² program.

(1) Notwithstanding any other law to the contrary, bonds issued by a participating municipality shall be authorized and issued by ordinance of the municipality, may be issued in one or more series on such additional terms, and may be sold at public or private sale, all as set forth in the ordinance.

(2) Bonds issued by a county improvement authority shall be authorized and issued in the manner set forth in the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.).

(3) Bonds issued by a participating municipality or county improvement authority shall be non-recourse obligations of the issuer and shall not be considered to be direct and general obligations of the issuer, or the State of New Jersey or any political subdivision thereof. Any bonds issued or authorized by a municipality pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S. 40A:2-1 et seq.

(4) Bonds issued by a municipality or county improvement authority pursuant to this subsection may be backed by one or more C-PACE assessment contracts.

c. The authority shall allow capital providers to directly finance ²project costs for² C-PACE projects ², or for such costs to be financed through bond issuance² . Any direct financing provided by a capital provider pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall not be guaranteed or secured by the full faith and credit of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered to be direct and general obligations of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be

considered gross debt of any municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall not be considered "financial assistance" pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1) [2], except to the extent the authority may provide a guaranty as provided for in subsection d. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill)[2] . The Garden State C-PACE program [2]and any local C-PACE program[2] shall [2][not limit C-PACE financing to a single private capital provider] permit all capital providers that meet the eligibility requirements established in their program guidelines to provide financing through the program[2] .

d. [2][A municipality, county improvement authority, or private entity authorized to implement or administer, or a combination thereof,] An authorized municipality or county that has established[2] a local C-PACE program shall allow capital providers to directly finance [2]project costs for[2] C-PACE projects [2]under the program[2] . [2][Any direct] The repayment of any[2] financing provided by a capital provider shall not be guaranteed or secured by the full faith and credit of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered to be direct and general obligations of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered gross debt of any municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall not be considered "financial assistance" [2][N.J.S. 34:1B-5.1. A local C-PACE program shall not limit C-PACE financing to a single private capital provider. The C-PACE assessment, lien and assignment agreement apply to direct financing from a capital provider] pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1), except to the extent the authority may provide a guaranty as provided for in subsection d. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill)[2] .

e. A property owner who installs a renewable energy system under the Garden State C-PACE program or a local C-PACE program may also assign or transfer any solar renewable energy certificates [2], transition renewable energy certificates,[2] or other renewable energy certificates or credits that accrue to the property owner from the operation of the system to the authority, the municipality, the county improvement authority, other public entity, or the private entity, or capital provider as applicable, which has financed the C-PACE project. If any solar renewable energy certificates [2], transition renewable energy certificates,[2] or other renewable energy certificates or credits are assigned or transferred to a municipality, county, county improvement authority, other public entity, or private entity, the municipality, county, county improvement authority, other public entity, or private entity, or capital provider is authorized to sell, grant,

assign, convey, or otherwise dispose of its interest in the certificates or credits to repay the financing.

[2]f. Other than as identified in this section, no public entity, including the State of New Jersey or any political subdivision thereof, may issue bonds to finance any C-PACE program, except to the extent the authority may issue bonds pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.).[2]

[2][10. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to read as follows:

1. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement and may provide by ordinance for a "clean energy special assessment" to be imposed on a property within the municipality, if the owner of the property requests the assessment in order to install the systems or improvements. Each improvement on an individual property shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby. The clean energy special assessment shall be payable in quarterly installments. The terms of the clean energy special assessment shall be in accordance with the terms of the financing provided by the municipality pursuant to section 2 of P.L.2011, c.187 (C.40:56-13.1).

b. Notwithstanding the provisions of subsection a. of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept, and a municipality shall not submit, an application to undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic Development Authority has published on its Internet website all the items pursuant to subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature at this bill). The Director of Local Government Services in the Department of Community Affairs shall continue to process any application submitted prior to that date, and a municipality shall continue its undertaking approved prior to that date and any undertaking for which an application was pending on that date that is approved on or after that date.

c. All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.187, s.1)][2]

[2]10. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to read as follows:

1. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement and may provide by ordinance for a "clean energy special assessment" to be imposed on a property within the municipality, if the owner of the property requests the assessment in order to install such systems or improvements. Each improvement on an individual property shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby. The clean energy special assessment shall be payable in quarterly installments. The terms of the clean energy special assessment shall be in accordance with the terms of the financing provided by the municipality pursuant to section 2 of P.L.2011, c.187 (C.40:56-13.1).

b. Notwithstanding the provisions of subsection a. of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept, and a municipality shall not submit, an application to undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic Development Authority has published on its Internet website all the items pursuant to subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature at this bill). The Director of Local Government Services in the Department of Community Affairs shall continue to process any application submitted prior to that date, and a municipality shall continue its undertaking approved prior to that date and any undertaking for which an application was pending on that date that is approved on or after that date.

c. All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L. , c. (C.) (pending before the Legislature as this bill).[2]

(cf: P.L.2011, c.187, s.1)

11. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to read as follows:

2. a. (1) Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, a municipality may adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners and to authorize the issuance at public or private sale of non-recourse bonds as further

provided herein. The governing body may apply to a county improvement authority that issues bonds pursuant to paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2). Funds for the purchase and installation of renewable energy systems and energy efficiency improvements shall be loaned to property owners in exchange for a clean energy special assessment on the property pursuant to section 1 of P.L.2011, c.187 (C.40:56-1.4), to be paid quarterly. In the case of financing provided by bonds issued by a county improvement authority, the clean energy special assessment shall be used to repay the bonds. The bonds issued by a county improvement authority pursuant to this section shall be issued as non-recourse obligations of the authority and shall not be considered to be direct and general obligations of the authority. In the case of financing provided by the municipality through the issuance of municipal bonds, the clean energy special assessment shall be used to repay the bonds. The bonds issued by a municipality pursuant to this section shall be issued as non-recourse obligations of the municipality and shall not be considered to be direct and general obligations of the municipality. Any bonds issued or authorized by a municipality pursuant to this section shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. A property owner who purchases and installs a renewable energy system under the program may also assign any solar renewable energy certificates [2], transition renewable energy certificates,[2] or other renewable energy credits that accrue to the property owner from the operation of the system to the municipality or the county improvement authority to repay the loan for the system. The Director of Local Government Services in the Department of Community Affairs shall coordinate efforts with the Board of Public Utilities to ensure that the amount of financing made available by local programs authorized pursuant to this act is in accordance with limits set from time to time by the Board of Public Utilities in order to ensure that local programs further the goals of the Office of Clean Energy in the Board of Public Utilities.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept and a municipality shall not submit an application for approval of an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic Development Authority has published on its Internet website all of the items pursuant to subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature at this bill). The Director of Local Government Services in the Department of Community Affairs shall continue to process any application submitted prior to that date, and a

municipality shall adopt any ordinance approved prior to that date and any ordinance for which an application was pending on that date that is approved on or after that date.

(3) All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

b. As used in this section [2][, "solar]:

"Solar[2] renewable energy certificate" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

[2]"Transition renewable energy certificate" shall have the same meaning as set forth in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).[2]

(cf: P.L.2019, c.335, s.4)

12. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to read as follows:

3. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may establish the amounts of money to be expended by the municipality for the improvements authorized in sections 1 and 2 of P.L.2011, c.187 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may be raised by the issuance of clean energy special assessment bonds by the municipality. In making the appropriation, the governing body may designate the particular projects to be financed to which the moneys shall be applied.

b. Clean energy special assessments and bonds issued to finance them shall be issued and shall be generally subject to R.S.40:56-21 et seq., as the director shall determine to be applicable.

c. The director is authorized and empowered to take such action as deemed necessary and consistent with the intent of this act to implement its provisions.

d. Notwithstanding the provisions of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept, and the governing body of a municipality shall not submit an application pursuant to subsection a. of this section after the date the Economic Development Authority has published on its Internet website all of the items pursuant to subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature at this bill). The Director of Local Government Services in the Department of Community Affairs or a municipality shall continue to process any application submitted prior to that date, and an application approved by a municipality prior to that date shall be implemented.

e. All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.187, s.3)

13. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

11. a. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50 **[**%**]** percent of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in **[**this act**]** the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), including the

construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of **[**this act**]** the "county improvement authorities law," P.L.1960, c. 183 (C.40:37A-44 et seq.), as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A county improvement authority shall also have as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units. A county improvement authority shall also have as its purpose the **[2]**[implementation and]**[2]** administration, **[2]**[or a combination thereof,]**[2]** on behalf of an authorized municipality or county,**[2]** of a local C-PACE program as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) and to issue bonds to finance a C-PACE

project for a local C-PACE program [3]or the Garden State C-PACE program[3] pursuant to section 9 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. In a fiscal year in which a public health emergency, pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both has been declared by the Governor in response to COVID-19 and during the next following fiscal year, a county improvement authority shall also have as its purpose the pooling of special emergency notes issued by the county or any beneficiary county, or by any local governmental unit within the county or any beneficiary county, pursuant to N.J.S.40A:4-55 for purposes of financing a special emergency appropriation authorized for the purpose set forth in subsections l. and m. of N.J.S.40A:4-53.

(cf: P.L.2020, c.74, s.8)

14. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to read as follows:

12. Every authority shall be a public body politic and corporate constituting a political subdivision of the State established as an instrumentality exercising public and essential governmental functions to provide for the public convenience, benefit and welfare and shall have perpetual succession and, for the effectuation of its purposes, have the following additional powers:

(a) To adopt and have a common seal and to alter the same at pleasure;

(b) To sue and be sued;

(c) To acquire, hold, use and dispose of its facility charges and other revenues and other moneys;

(d) To acquire, rent, hold, use and dispose of other personal property for the purposes of the authority;

(e) Subject to the provisions of section 26 of this act, to acquire by purchase, gift, condemnation or otherwise, or lease as lessee, real property and easements or interests therein necessary or useful and convenient for the purposes of the authority, whether subject to mortgages, deeds of trust or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the authority; provided that the authority may dispose of such property at any time to any governmental unit or person if the authority shall receive a leasehold interest in the property for such term as the authority deems appropriate to fulfill its purposes;

(f) Subject to the provisions of section 13 of this act, to lease to any governmental unit or person, all or any part of any public facility for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon;

(g) To enter into agreements to lease, as lessee, public facilities for such term and under such conditions as the authority may deem necessary and desirable to fulfill its purposes, and to agree, pursuant thereto, to be unconditionally obligated to make payments for the term of the lease, without set-off or counterclaim, whether or not the public facility is completed, operating or operable, and notwithstanding the destruction of, damage to, or suspension, interruption, interference, reduction or curtailment of the availability or output of the public facility to which the agreement applies;

(h) To extend credit or make loans to any governmental unit or person for the planning, design, acquisition, construction, equipping and furnishing of a public facility, upon the terms and conditions that the loans be secured by loan and security agreements, mortgages, leases and other instruments, the payments on which shall be sufficient to pay the principal of and interest on any bonds issued for the purpose by the authority, and upon such other terms and conditions as the authority shall deem reasonable;

(i) Subject to the provisions of section 13 of this act, to make agreements of any kind with any governmental unit or person for the use or operation of all or any part of any public facility for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon;

(j) (1) To borrow money and issue negotiable bonds or notes or other obligations and provide for and secure the payment of any bonds and the rights of the holders thereof, and to purchase, hold and dispose of any bonds;

(2) To issue bonds, notes or other obligations to provide funding to a municipality that finances the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as provided in section 2 of P.L.2011, c.187 (C.40:56-13.1);

(3) To issue bonds, notes, or other obligations to finance a C-PACE project for a local C-PACE program pursuant to section 9 of P.L. , c. (C.) (pending before the Legislature as this bill);

(k) To apply for and to accept gifts or grants of real or personal property, money, material, labor or supplies for the purposes of the authority from any governmental unit or person, and to make and perform agreements and contracts and to do any and all things necessary or useful and convenient in connection with the procuring, acceptance or disposition of such gifts or grants;

(l) To determine the location, type and character of any public facility and all other matters in connection with all or any part of any public facility which it is authorized to own, construct, establish, effectuate or control;

(m) To make and enforce bylaws or rules and regulations for the management and regulation of its business and affairs and for the

use, maintenance and operation of any public facility, and to amend the same;

(n) To do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contract with any governmental unit or person;

(o) To acquire, purchase, construct, lease, operate, maintain and undertake any project and to fix and collect facility charges for the use thereof;

(p) To mortgage, pledge or assign or otherwise encumber all or any portion of its revenues and other income, real and personal property, projects and facilities for the purpose of securing its bonds, notes and other obligations or otherwise in furtherance of the purpose of this act;

(q) To extend credit or make loans to redevelopers for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing any redevelopment project or redevelopment work;

(r) To conduct examinations and investigations, hear testimony and take proof, under oath at public or private hearings of any material matter, require the attendance of witnesses and the production of books and papers and issue commissions for the examination of witnesses who are out of the State, unable to attend, or excused from attendance;

(s) To authorize a committee designated by it consisting of one or more members, or counsel, or any officer or employee to conduct any such investigation or examination, in which case such committee, counsel, officer or employee shall have power to administer oaths, take affidavits and issue **[**subpenas**]** <u>subpoenas</u> or commissions;

(t) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this act subject to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.);

(u) To pool loans for any local governmental units within the county or any beneficiary county that are refunding bonds and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the authority to achieve more favorable interest rates and terms for those local governmental units; and

(v) To act as and exercise the powers of a land bank entity pursuant to P.L.2019, c.159 (C.40A:12A-74 et al.) for any municipality situated within the county pursuant to a land banking agreement approved by an ordinance adopted by the municipal governing body.

(cf: P.L.2019, c.159, s.17)

15. This act shall take effect immediately, except that neither the Garden State C-PACE program nor any local C-PACE program established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall be operable until the authority has published on its Internet website all of items required pursuant to subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use of voluntary special assessments by municipalities for certain property owners.

CHAPTER 201
(CORRECTED COPY OF CORRECTED COPY)

AN ACT concerning the implementation of renewable energy and energy efficiency systems and water conservation, flood and hurricane resistance projects, energy storage, and microgrids, supplementing Title 34 of the Revised Statutes, and amending P.L.1960, c.183 and P.L.2011, c.187.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.34:1B-374 Findings, declarations.

1. The Legislature finds and declares it to be the public policy of this State that:

a. Investing in water conservation, stormwater management, renewable energy, energy efficiency, and flood and hurricane mitigation improvements to real property is a critical component in conserving natural resources and mitigating the effects of floods and hurricanes;

b. The up-front costs of retrofitting properties with these improvements are often a barrier to investing in such improvements, and the additional cost of meeting and exceeding new code requirements in connection with new construction is a deterrent to the investments;

c. Recent studies have demonstrated that the existing financing options for these projects have not made them sufficiently available to property owners and developers;

d. Property assessed clean energy ("PACE") financing, in which repayment is made by way of a special assessment on the real property to which the improvement, including new construction upon previously unimproved real property, is made, is an innovative way for property owners to finance or refinance renewable energy, energy and water efficiency, and other eligible improvements which, in turn, saves a significant sum in utility costs or insurance premiums, creates jobs, stimulates local economies, reduces greenhouse gas emissions, and improves the safety and quality of the building stock;

e. To date, PACE programs for commercial properties ("C-PACE") operate in more than 24 other states and the District of Columbia, and they have facilitated more than $2 billion in investment in over 2,100 C-PACE projects;

f. C-PACE financing will enable New Jersey municipalities to contribute toward their goals of community sustainability and reducing greenhouse gas emissions and energy consumption, and will provide a valuable service to the citizens of their communities; and

g. C-PACE financing serves a valid public purpose and enactment of P.L.2021, c.201 (C.34:1B-374 et al.) is expressly declared to be in the public interest.

C.34:1B-375 Definitions.

2. As used in sections 1 through 9 of P.L.2021, c.201 (C.34:1B-374 through C.34:1B-382):

"Assignment agreement" means an agreement in which a participating municipality assigns a C-PACE assessment to a capital provider, its designee, successor or assign.

"Authority" means the New Jersey Economic Development Authority.

"Authorized municipality" means a municipality with a population that, as of the launch date, is in the top third of municipalities in the State in terms of population, according to the most recent American Community Survey published by the United States Census Bureau.

"Capital provider" means:

a. an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R.230.501 through 230.508) or Rule 144A (17 C.F.R.230.144A) of the federal "Securities Act of 1933" (15 U.S.C. s.77a et seq.), as amended;

b. the trustee or custodian of a trust or custody arrangement which provides that each beneficial owner of interests shall be an accredited investor or qualified institutional buyer;

c. a public entity;

d. a special purpose securitization vehicle for the sale and transfer of securities, which is restricted to those persons described in subsection a. or b. of this definition; or

e. a commercial lending institution chartered by a state or the federal government, including, without limitation, a savings and loan association, a credit union, or a commercial bank.

"C-PACE" means commercial property assessed clean energy.

"C-PACE assessment" means a local improvement assessment, in accordance with chapter 56 of Title 40 of the Revised Statutes, imposed by a participating municipality on a property, with the consent of the owner of the property, and determined based upon either the existing use of a property or the contemplated use of unimproved property upon completion of new construction, as a means of securing financing provided pursuant to section 9 of P.L.2021, c.201 (C.34:1B-382) to finance a C-PACE project at the property, payments in respect of which assessment are collected by the participating municipality and remitted to the entity that provided the financing or its designee.

"C-PACE assessment agreement" means an agreement between a participating municipality and a property owner in which the property owner agrees to the imposition of a C-PACE assessment on the property benefited by a C-PACE project within the municipality, and in which the participating municipality agrees to levy, bill, collect, remit, and, to the extent necessary, enforce the C-PACE assessment.

"C-PACE project" means:

a. the acquisition, construction, installation, modification, or, in the discretion of the authority and in accordance with guidelines adopted by the authority, entry into a capital lease of an energy efficiency improvement or renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction upon previously unimproved real property, within a participating municipality, provided that, on the basis of supplemental program guidelines to be published by the authority within 90 days following the launch date, a qualified professional attests that such new construction exceeds the minimum standards of the local and State building codes otherwise applicable to the property;

b. at the discretion of, and in accordance with guidelines adopted by, the authority, a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or

c. at the discretion of, and in accordance with guidelines adopted by, the authority, a power purchase agreement with respect to a renewable energy system affixed to a property.

"Direct financing" means financing for a C-PACE project pursuant to a financing agreement entered into between a capital provider and a property owner.

"Electric vehicle charging infrastructure" means equipment designed to deliver electric energy to a battery electric vehicle or a plug-in hybrid vehicle.

"Energy efficiency improvement" means an improvement to reduce energy consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy, including, but not limited to: air sealing; installation of insulation; installation of energy-efficient electrical, heating, cooling, or ventilation systems; building modifications to increase the use of daylight; energy efficient windows, doors, and glass; installation of energy or water controls or energy recovery systems; and installation of efficient lighting equipment.

"Finance" or "financing" means the investing of capital in accordance with section 9 of P.L.2021, c.201 (C.34:1B-382), including, on the basis of supplemental program guidelines to be

published by the authority within 90 days following the launch date, the refinancing of an investment in an existing C-PACE project.

"Flood resistant construction improvement" means an improvement that mitigates the likelihood of flood damage, including, but not limited to, the installation of break-away walls and building elevation alterations.

"Garden State C-PACE program" means the program established by the authority pursuant to sections 4 and 5 of P.L.2021, c.201 (C.34:1B-377 and C.34:1B-378).

"Garden State program agreement" means an agreement between the authority and a participating municipality defining:

a. the obligations of a municipality to participate in the Garden State C-PACE program, including the requirement that the participating municipality levy, bill, collect, remit, and enforce a C-PACE assessment; and

b. the obligations, if any, that the authority may undertake (1) with respect to the remittance of C-PACE assessments to capital providers if the remittance is authorized by regulations adopted by the Local Finance Board pursuant to section 38 of P.L.2000, c.126 (C.52:27D-20.1) and requested by the participating municipality, and (2) to review and approve the participation of individual capital providers or financings in the Garden State C-PACE program. Neither the execution by the authority of a Garden State program agreement with a municipality nor its exercise of its rights or performance of its duties thereunder shall be considered "authority financial assistance" as that term is defined in section 1 of P.L.1979, c.303 (C.34:1B-5.1).

"Hurricane resistant construction improvement" means an improvement that enables a component of a structure to be in compliance with the standards for a "wind-borne debris region" adopted pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or into compliance with a successor standard under that code.

"Launch date" means the date upon which the authority has taken all of the actions specified in subsection c. of section 5 of P.L.2021, c.201 (C.34:1B-378), other than any actions that are expressly required by P.L.2021, c.201 (C.34:1B-374 et al.) to be taken within 90 days following the launch date.

"Local C-PACE program" means a program established by an authorized municipality or a county pursuant to section 6 of P.L.2021, c.201 (C.34:1B-379).

"Local C-PACE program ordinance" means an ordinance adopted by an authorized municipality or a county, and approved by the authority pursuant to section 7 of P.L.2021, c.201 (C.34:1B-380), to establish a program within its jurisdiction pursuant to subsection b. of section 5 and subsection a. of section 6 of P.L.2021, c.201 (C.34:1B-378 and C.34:1B-379).

"Microgrid" means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the electric distribution system and that connects and disconnects from the electric distribution system to enable it to operate when both connected to, or independent of, the electric distribution system.

"Notice of assessment" means the document filed with the county recording officer in the county in which a property is located, which notifies prospective holders of an interest in the property that a C-PACE assessment lien has been placed on the property.

"Opt-in ordinance" means an ordinance adopted by a municipality by which it authorizes its participation in the Garden State C-PACE program and authorizes the municipality to enter into a Garden State program agreement with the authority.

"Participating municipality" means:

a. a municipality that adopts an opt-in ordinance and executes a Garden State program agreement; or

b. an authorized municipality that adopts an opt-in ordinance, executes a Garden State program agreement, and adopts a local C-PACE program ordinance and local C-PACE program guidelines approved by the authority.

"Private entity" means a corporation, limited liability company, partnership, trust, or any other form of private organization, including but not limited to a "related competitive business segment of a public utility holding company," or a "related competitive business segment of an electric public utility or gas public utility," as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), so long as the organization is not subject to the jurisdiction of the Board of Public Utilities.

"Program guidelines" means:

a. any program-related rules or documents, or both, prepared and published by the authority that apply to the Garden State C-PACE program; or

b. any program-related rules or documents, or both, prepared and published by an authorized municipality or a county, and approved by the authority, that apply to local C-PACE programs pursuant to paragraph (3) of subsection b. of section 6 of P.L.2021, c.201 (C.34:1B-379).

"Project costs" means costs associated with a C-PACE project and shall include: direct costs, including but not limited to, equipment, materials, and labor related to the purchasing, constructing, installing, modifying, or acquiring a C-PACE project; indirect costs, including, but not limited to, expenses and fees of engineers, architects, and other professionals, inspection fees and permits, warranties and pre-paid maintenance contracts; program fees; and financing costs of a capital provider, including, but not limited to, origination fees, prepaid interest and payment reserves, closing costs, counsel fees, trustee or custodian fees, recording fees, and other financing charges, except that the authority may implement an alternative definition of "project costs" in its program guidelines in connection with the financing of new construction.

"Property" means industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments as defined in section 3 of P.L.1977, c.419 (C.45:22A-23); and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions, within a participating municipality upon which a C-PACE assessment is imposed at the request of a property owner in connection with a C-PACE project.

"Property owner" means an owner of a property within a participating municipality who consents to a C-PACE assessment being imposed on the property.

"Renewable energy system" means an improvement by which electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, biomass, or wind energy, together with the other fuels and energy sources that the authority, after consultation with the Board of Public Utilities, may determine pursuant to program guidelines prepared and published pursuant to subsection c. of section 5 of P.L.2021, c.201 (C.34:1B-378).

"Solar renewable energy certificate" means the same as defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Stormwater management system" means the same as defined in section 3 of P.L.2019, c.42 (C.40A:26B-3).

"Transition renewable energy certificate" means a certificate issued by the Board of Public Utilities or its designee, under the solar energy transition incentive program, which is designed to transition between the solar renewable energy certificate program and a solar successor incentive

program to be developed by the Board of Public Utilities pursuant to P.L.2018, c.17 (C.48:3-87.8 et al.).

"Uniform assessment documents" means a uniform C-PACE assessment agreement, assignment agreement, and notice of assessment, a model lender consent to a C-PACE assessment pursuant to section 5 of P.L.2021, c.201 (C.34:1B-378), and any other uniform or model documents prepared by the authority and used in the Garden State C-PACE program and local C-PACE programs, except that the authority shall not mandate a uniform financing agreement, which shall be supplied by the capital provider for direct financing.

"Water conservation improvement" means an improvement that reduces water consumption, increases the efficiency of water use, or reduces water loss.

C.34:1B-376 Report to Governor, Legislature.

3. a. (1) No later than 18 months after the launch date and annually thereafter, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report describing the implementation and operation of the Garden State C-PACE program, including information relating to any administrative costs, the number of C-PACE projects, the location of C-PACE projects, and the amount of financing issued for C-PACE projects under the Garden State C-PACE program.

(2) No later than 18 months after an authorized municipality or a county establishes a local C-PACE program pursuant to section 6 of P.L.2021, c.201 (C.34:1B-379), and annually thereafter, the municipality or county shall prepare and submit to the Governor, the authority, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, a report describing the implementation and operation of its local C-PACE program, including information relating to any administrative costs, the number of C-PACE projects, the location of C-PACE projects, and the amount of financing issued for C-PACE projects under its local C-PACE program.

b. (1) No later than five years after the launch date, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program. The report shall evaluate the Garden State C-PACE program, including a review of foreclosure rates and any other factors the authority deems appropriate. The report may also identify and recommend legislative changes to P.L.2021, c.201 (C.34:1B-374 et al.). The report shall include an assessment of whether the costs incurred in implementing the Garden State C-PACE Program are an effective means of facilitating the financing of projects.

(2) No later than five years after an authorized municipality or a county establishes a local C-PACE program pursuant to section 6 of P.L.2021, c.201 (C.34:1B-379), the municipality or county shall prepare and submit to the Governor, the authority and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, a report that reviews and assesses implementation of the local C-PACE program. The report shall evaluate its local C-PACE program, including a review of foreclosure rates and any other factors the authority deems appropriate. The report may also identify and recommend legislative changes to P.L.2021, c.201 (C.34:1B-374 et al.).

c. The authority shall post all reports prepared by the authority pursuant to this section on its Internet website. Each authorized municipality and each county that has established a local C-PACE program shall post all reports prepared by it pursuant to this section on its Internet website.

C.34:1B-377 Garden State C-PACE program.

4. a. The authority shall establish a Garden State C-PACE program to facilitate the financing of C-PACE projects in municipalities that adopt an opt-in ordinance. The Garden State C-PACE program shall consist of the development of uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance, subject to the approval of the authority, for a C-PACE assessment to be imposed on properties within the municipality, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby.

b. The authority may contract with, and set the compensation of, one or more third-party administrators, whether private, public or quasi-public, or for-profit or not-for-profit, to assist the authority in its implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. The authority may delegate any duties under the program to one or more third-party administrators, provided that the authority shall not delegate its responsibility for general oversight of the Garden State C-PACE program.

c. The authority may enter into a memorandum of agreement with one or more State government agencies or instrumentalities whereby any of the powers the authority may exercise or responsibilities it must fulfill pursuant to P.L.2021, c.201 (C.34:1B-374 et al.) may be exercised or fulfilled, as the case may be, by such agency or instrumentality, and any fund that may be used for administrative expenses by the authority may be used by such agency or instrumentality in exercising such powers or fulfilling such responsibilities.

d. The authority may establish a loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by capital providers providing direct financing, in order to improve the availability and financial terms of such financing of C-PACE projects for property owners.

C.34:1B-378 Information published on Internet website.

5. a. Within 270 days after the effective date of P.L.2021, c.201 (C.34:1B-374 et al.), the authority shall establish the Garden State C-PACE program by publishing on its Internet website:

(1) uniform assessment documents;

(2) a model opt-in ordinance;

(3) Garden State C-PACE program guidelines adopted pursuant to subsection c. of this section; and

(4) a description of the process by which a county or an authorized municipality applies to the authority for approval of a local C-PACE program ordinance.

The Garden State C-PACE program shall not be operational and available for the participation of capital providers, municipalities and property owners until the authority has taken all of the actions required by this subsection.

b. The model opt-in ordinance, as well as any local C-PACE program ordinance, shall prescribe a subset of the criteria for qualifying a C-PACE project for a C-PACE assessment, including the following:

(1) financing recipients shall be the legal or beneficial owners of the property or duly authorized by the legal or beneficial owners of the property, there shall be no defaults on any mortgage loans on the subject property, all tax payments, charges, and assessments with respect to the property shall be current, the legal or beneficial owners of the property shall not be subject to any bankruptcy proceeding, and the subject property shall not be the subject of a bankruptcy proceeding;

(2) the principal amount of the C-PACE assessment, when combined with mortgage and other lien obligations on a property shall not exceed 90 percent of the appraised value of the property after including the value created by the C-PACE project;

(3) the maximum duration of a C-PACE assessment, which shall be determined pursuant to the provisions of paragraph (6) of subsection c. of this section, shall not exceed the weighted average useful life of the improvements in the C-PACE project or 30 years, whichever is less;

(4) the amount of the C-PACE assessment for a property shall be a specific amount, and the terms of repayment of direct financing shall be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment in paragraph (3) of this subsection; and

(5) a property owner seeking a C-PACE assessment shall receive written consent of the existing mortgage holders on the property prior to the closing of the financing.

c. Pursuant to the purposes and objectives outlined in P.L.2021, c.201 (C.34:1B-374 et al.), and with respect to the responsibilities of overseeing and implementing the Garden State C-PACE program, the authority shall develop, in consultation with the Division of Local Government Services in the Department of Community Affairs, program guidelines governing the terms and conditions under which financing may be made available under the Garden State C-PACE program. Any amendments to the Garden State C-PACE program guidelines shall require the approval of the authority's board of directors.

Pursuant to the purposes and objectives outlined in P.L.2021, c.201 (C.34:1B-374 et al.), and with respect to the responsibilities of overseeing and implementing a local C-PACE program, a county or authorized municipality shall develop program guidelines governing the terms and conditions under which financing may be made available under the local C-PACE program. The program guidelines, and any amendments thereto, for a local C-PACE program shall be consistent with the Garden State C-PACE program guidelines and the requirements set forth in P.L.2021, c.201 (C.34:1B-374 et al.) for C-PACE projects and financing, and shall be subject to approval by the authority pursuant to subsection a. of section 7 of P.L.2021, c.201 (C.34:1B-380).

The Garden State C-PACE program guidelines and any local C-PACE program guidelines shall include, but not be limited, to:

(1) a uniform project application, uniform application requirements, including uniform application documents; and the procedures for a property owner to obtain approval of a C-PACE project and a capital provider to finance a C-PACE project;

(2) minimum standards for a C-PACE project to qualify for C-PACE financing;

(3) eligibility criteria for a property owner and property to qualify for a C-PACE assessment;

(4) the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the Garden State C-PACE program and local C-PACE programs and the maximum permitted amount of a financing based on a property's value and other characteristics;

(5) a requirement that all existing mortgage lien holders on a property be given notice prior to a C-PACE assessment and lien being filed in connection with that property, and that all property owners receive consent of the existing mortgage holders on the property;

(6) a requirement that the term of a financing be no longer than the forecast life of the improvements, which shall be calculated on a blended average basis taking account of the relative values of the fixed assets included in the C-PACE project, except that the authority may establish alternative criteria for establishing the maximum term of a financing for a C-PACE project that consists of new construction;

(7) within 90 days following the launch date with respect to the Garden State C-PACE program guidelines only, supplemental program guidelines for refinancing projects completed

prior to the submission of a project application for a C-PACE assessment and for the use of the Garden State C-PACE program in connection with the financing of new construction upon previously unimproved real property.

d. Subject to the written consent of existing mortgage holders, the form of which shall be determined by the authority in its uniform assessment documents adopted pursuant to subsection a. of section 5 of P.L.2021, c.201 (C.34:1B-378), the C-PACE assessment shall be a single, continuous first lien on the property on and after the date of recordation of the C-PACE assessment agreement. A property with delinquent taxes, charges, or assessments shall not be eligible for a C-PACE assessment. Upon recordation of the C-PACE assessment agreement in the land records of the county in which the property is located, the lien thereof shall be perfected for all purposes in accordance with law, and the lien shall be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances thereon, except subsequent taxes, charges, or assessments, without any additional notice, recording, filing, continuation filing, or action, until payment in full of the C-PACE assessment, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any other proceeding which does not impair the substantial rights of the owner or owners or other person or persons having a lien upon or interest in any the real estate. Any confirmation of the amount of the C-PACE assessment by the applicable municipality's governing body or by a court shall be considered as determining the amount of the existing lien and not as establishing the lien. All C-PACE assessments shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

e. A C-PACE assessment shall be treated as a municipal lien rather than a contractual lien for all purposes of law.

f. Funds to finance a C-PACE project may be disbursed to, or for the benefit of, the property owner at execution of the C-PACE assessment agreement, or may be disbursed in installments over time. The funds shall not constitute public funds, and shall not be subject to the laws governing public funds, including, but not limited to, laws regarding the receipt, expenditure, deposit, investment, or appropriation of the same. Payments of the C-PACE assessment shall commence as set forth in the C-PACE assessment agreement. To the extent that upon completion of the C-PACE project, funds remain that have not been disbursed to the property owner, those funds on hand shall be used to reduce the amount of the C-PACE assessment in accordance with the C-PACE assessment agreement.

g. Except as provided in this subsection, if any payment of a C-PACE assessment is not made when that payment shall have become due, or later, consistent with any grace period provided or extended by a participating municipality for the payment of property tax bills as may be permitted or required by law, interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the participating municipality. Notwithstanding any other provision of law, such statutory interest shall be in addition to any accrued interest and any amount fixed as a penalty for delinquency pursuant to the financing agreement between the property owner and the capital provider. All such amounts shall be collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the participating municipality enforces collection of its unpaid property taxes through accelerated tax sales. The proceeds of the sale shall also pay the outstanding past unpaid amounts of the C-PACE assessment. However, the remaining balance not delinquent on a C-PACE assessment shall not be subject to acceleration or extinguishment in the event of a default in payment. Any statutory

interest collected by the municipality on a delinquent C-PACE assessment pursuant to this subsection shall be retained by the municipality. Any accrued interest, or any amount fixed as a penalty for delinquency, pursuant to the financing agreement between the property owner and the capital provider shall be remitted to the capital provider. If the property owner is delinquent on a C-PACE assessment as well as delinquent on taxes, charges, or other assessments, any payment shall be applied towards any and all such other delinquencies before being applied to any delinquent C-PACE assessment. Notwithstanding any other provision of law, in the event that any lien on the property shall be exposed to tax sale, pursuant to the "tax sale law," R.S.54:5-1 et seq., and is struck off and sold to the participating municipality, the C-PACE assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances, except subsequent taxes, charges, or other assessments, and provided that, notwithstanding the obligations of a participating municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5- 53.1), while the participating municipality holds the lien or owns the property, the participating municipality shall not be responsible for or required to make any payment from its treasury or any other source in furtherance of or to satisfy the C-PACE assessment. A municipality shall not bear any other responsibility in furtherance or satisfaction of a C-PACE assessment, except that a municipality may be compelled to enforce a lien through an action to foreclose. In the event of a taking of the property by eminent domain or condemnation, the C-PACE assessment may be accelerated or extinguished, at the election of the capital provider, provided the capital provider is compensated in accordance with the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), by the governmental entity utilizing eminent domain or condemnation for the balance due on the unpaid C-PACE assessment and any interest, penalties, or other charges related thereto.

h. (1) C-PACE assessments shall be assigned directly by the participating municipality, and any assignee thereof, as security for financing from a capital provider to finance C-PACE projects. Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the participating municipality's right, title, and interest in and to the C-PACE assessment, except for its obligations to bill, collect, remit, and enforce C-PACE assessments as set forth in the assignment agreement. The proceeds of a C-PACE assessment shall be considered "special revenues" owned by the capital provider pursuant to chapter 9 of the federal bankruptcy code.

(2) C-PACE assessments assigned as provided hereunder shall not be included in the general funds of the participating municipality, or be subject to any laws regarding the receipt, deposit, investment, or appropriation of public funds, and shall retain such status notwithstanding enforcement of the assessment by the participating municipality or assignee as provided herein. In the case of a participating municipality that is otherwise subject to tax or revenue sharing pursuant to law and which assigns C-PACE assessments as set forth in this section, the C-PACE assessments shall not be considered part of the tax or revenue sharing formula or calculation of municipal revenues for the purpose of determining whether that participating municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool. However, the redemption of any delinquent and unpaid C-PACE assessments, including any interest, penalties, or other charges related thereto, shall be paid no later than on the first available tax bill after the property has been sold after an action to foreclose the right of redemption.

i. The provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall not apply to the preparation, publication, or implementation of the uniform

assessment documents or the program guidelines of the Garden State C-PACE program or a local C-PACE program.

C.34:1B-379 Local C-PACE program.

6. a. An authorized municipality that has adopted an opt-in ordinance may also establish a local C-PACE program to facilitate the financing of C-PACE projects in that authorized municipality. A county may also establish a local C-PACE program pursuant to a local C-PACE program ordinance to facilitate the financing of C-PACE projects in participating municipalities located in that county that have adopted an opt-in ordinance. A local C-PACE program ordinance adopted by a county shall establish a program for the benefit of municipalities located within the county, but participating municipalities shall remain responsible for the process of levying, billing, collecting, remitting, and enforcing the C-PACE assessment. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only.

b. Notwithstanding the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.), or any other law, to the contrary, a county or authorized municipality seeking to establish and implement a local C-PACE program shall adopt a local C-PACE program ordinance consistent with this section and section 5 of P.L.2021, c.201 (C.34:1B-378). An authorized municipality may establish a local C-PACE program through the adoption of a local C-PACE program ordinance if the municipality has entered a Garden State program agreement with the authority, and obtained approval of the ordinance from the authority pursuant to section 7 of P.L.2021, c.201 (C.34:1B-380). A county may establish a local C-PACE program through the adoption of a local C-PACE program ordinance if the county has obtained approval of the ordinance from the authority pursuant to section 7 of P.L.2021, c.201 (C.34:1B-380).

In addition to prescribing criteria for qualifying a C-PACE project for a C-PACE assessment pursuant to subsection b. of section 5 of P.L.2021, c.201 (C.34:1B-378), a local C-PACE program ordinance shall establish the following:

(1) A participating municipality or a county may enter into an agreement with a county improvement authority or it may, pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) enter into contracts with one or more private parties, to assist the participating municipality or county in its implementation and administration, or a combination thereof, of the local C-PACE program. The municipality or county may delegate to one or more private parties or a county improvement authority such matters as the participating municipality determines, except that it may not delegate its reporting obligations pursuant to section 3 of P.L.2021, c.201 (C.34:1B-376) or its obligation to ensure that its local C-PACE program complies in all respects with P.L.2021, c.201 (C.34:1B-374 et al.) and its local C-PACE program guidelines.

(2) An authorized municipality or a county may, in addition to direct financing, offer financing of C-PACE projects through the issuance of bonds pursuant to section 9 of P.L.2021, c.201 (C.34:1B-382).

(3) A local C-PACE program shall not be operational and available for the participation of capital providers and property owners until the authorized municipality or county, as applicable,

by resolution of the governing body, authorizes local C-PACE program guidelines pursuant to subsection c. of section 5 of P.L.2021, c.201 (C.34:1B-378). The program guidelines for any local C-PACE program shall be consistent with the Garden State C-PACE program guidelines and the requirements set forth in P.L.2021, c.201 (C.34:1B-374 et al.) for C-PACE projects and financing, and shall be subject to approval by the authority pursuant to subsection a. of section 7 of P.L.2021, c.201 (C.34:1B-380). In addition, such program guidelines may include supplemental provisions, provided that they are not inconsistent with the Garden State C-PACE program guidelines and the requirements set forth in P.L.2021, c.201 (C.34:1B-374 et al.).

C.34:1B-380 Application to establish local C-PACE program.

7. a. An authorized municipality or a county seeking to establish a local C-PACE program pursuant to section 6 of P.L.2021, c.201 (C.34:1B-379) shall submit an application to the authority for approval. The application to the authority shall consist of the following:

(1) a proposed local C-PACE program ordinance consistent with subsection b. of section 5 of P.L.2021, c.201 (C.34:1B-378);

(2) acknowledgement that the authorized municipality or, in the case of a local C-PACE program established by a county, any participating municipality located in that county, shall use the uniform assessment documents prepared by the authority; and

(3) the authorized municipality's or county's proposed program guidelines.

b. (1) The authority’s review of a county's or authorized municipality’s application shall be limited to confirming that it contains the items required by section 5 of P.L.2021, c.201 (C.34:1B-378) and is otherwise in compliance with the provisions of P.L.2021, c.201 (C.34:1B-374 et al.). Within 60 days after receipt of the application, the authority shall either approve or reject the application. If the authority does not act within 60 days after receipt, the application shall be deemed approved.

(2) If the authority approves the application, or the application is deemed approved in accordance with paragraph (1) of this subsection, the county or authorized municipality may adopt the proposed ordinance establishing a local C-PACE program.

(3) If the authority disapproves the application, it shall provide a detailed explanation to the county or authorized municipality as to the reasons for the disapproval and the changes necessary to bring the proposed local C-PACE program ordinance, local C-PACE program guidelines, and other elements of the proposed local C-PACE program into compliance with the requirements of P.L.2021, c.201 (C.34:1B-374 et al.). The county or authorized municipality shall not adopt the proposed local C-PACE program ordinance if the authority disapproves the application, but the county or authorized municipality may submit a revised or new application.

c. The authority may monitor and oversee a county's or authorized municipality’s local C-PACE program to the extent it deems necessary to ensure the continuing compliance of the local C-PACE program with the requirements of P.L.2021, c.201 (C.34:1B-374 et al.). The authority’s discretionary monitoring and oversight role pursuant to this subsection shall not include the review and approval of C-PACE project applications that are submitted to a local C-PACE program. The authority shall review and approve C-PACE project applications that are submitted to the Garden State C-PACE program, but only an authorized municipality or county that has established a local C-PACE program pursuant to P.L.2021, c.201 (C.34:1B-374 et al.) may review and approve C-PACE project applications that are submitted to a local C-PACE program.

A participating municipality or a county with a local C-PACE program shall incorporate into its local C-PACE program guidelines any revision or amendment made by the authority

to the Garden State C-PACE program guidelines immediately upon the publication of the revision or amendment on the authority's website, unless the authority expressly provides otherwise, based upon a determination that the revision or amendment does not apply to local C-PACE programs. Any such revisions or amendments made by the authority to the Garden State C-PACE program guidelines or incorporated into local C-PACE program guidelines shall not apply retroactively to C-PACE projects that were previously approved pursuant to the Garden State C-PACE program or local C-PACE programs.

In the event that an authorized municipality or county desires to revise or amend its program guidelines in any other manner, such proposed revisions or amendments shall first be submitted to the authority for its review and approval before the revisions or amendments become effective.

C.34:1B-381 Fee charged to county, municipality.

8. a. The authority may charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or local C-PACE program guidelines. The fee shall reflect the reasonable and actual cost of the review, provided that the fee shall be a one-time charge not to exceed $5,000.

b. The authority may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the authority may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the participating municipality. The fee shall reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake.

c. A participating municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment. The fee shall reflect the reasonable and actual cost of the billing, collecting, and remitting of the annual amounts due for the C-PACE assessment.

C.34:1B-382 Financing, assessment on property.

9. a. Financing for the implementation of C-PACE projects, including the refinancing of an investment in an existing improvement that qualifies as a C-PACE project, provided the existing improvement was completed no more than three years prior to the submission of an application to the Garden State C-PACE program or local C-PACE program for the financing, shall be made available to property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment shall be used to repay the financing.

b. The governing body of a county or authorized municipality may apply to a county improvement authority that issues bonds pursuant to paragraph (3) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or, in the case of an authorized municipality, may issue bonds on its own to finance project costs for C-PACE projects pursuant to a local C-PACE program or the Garden State C-PACE program.

(1) Notwithstanding any other law to the contrary, bonds issued by a participating municipality shall be authorized and issued by ordinance of the municipality, may be issued in one or more series on such additional terms, and may be sold at public or private sale, all as set forth in the ordinance.

(2) Bonds issued by a county improvement authority shall be authorized and issued in the manner set forth in the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.).

(3) Bonds issued by a participating municipality or county improvement authority shall be non-recourse obligations of the issuer and shall not be considered to be direct and general obligations of the issuer, or the State of New Jersey or any political subdivision thereof. Any bonds issued or authorized by a municipality pursuant to P.L.2021, c.201 (C.34:1B-374 et al.) shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S. 40A:2-1 et seq.

(4) Bonds issued by a municipality or county improvement authority pursuant to this subsection may be backed by one or more C-PACE assessment contracts.

c. The authority shall allow capital providers to directly finance project costs for C-PACE projects, or for such costs to be financed through bond issuance. Any direct financing provided by a capital provider pursuant to P.L.2021, c.201 (C.34:1B-374 et al.) shall not be guaranteed or secured by the full faith and credit of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered to be direct and general obligations of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered gross debt of any municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall not be considered "financial assistance" pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1), except to the extent the authority may provide a guaranty as provided for in subsection d. of section 4 of P.L.2021, c.201 (C.34:1B-377). The Garden State C-PACE program and any local C-PACE program shall permit all capital providers that meet the eligibility requirements established in their program guidelines to provide financing through the program.

d. An authorized municipality or county that has established a local C-PACE program shall allow capital providers to directly finance project costs for C-PACE projects under the program. The repayment of any financing provided by a capital provider shall not be guaranteed or secured by the full faith and credit of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered to be direct and general obligations of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered gross debt of any municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall not be considered "financial assistance" pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1), except to the extent the authority may provide a guaranty as provided for in subsection d. of section 4 of P.L.2021, c.201 (C.34:1B-377).

e. A property owner who installs a renewable energy system under the Garden State C-PACE program or a local C-PACE program may also assign or transfer any solar renewable energy certificates, transition renewable energy certificates, or other renewable energy certificates or credits that accrue to the property owner from the operation of the system to the authority, the municipality, the county improvement authority, other public entity, or the private entity, or capital provider as applicable, which has financed the C-PACE project. If any solar renewable energy certificates, transition renewable energy certificates, or other renewable energy certificates or credits are assigned or transferred to a municipality, county, county improvement authority, other public entity, or private entity, the municipality, county, county improvement authority, other public entity, or private entity, or capital provider is authorized to sell, grant, assign, convey, or otherwise dispose of its interest in the certificates or credits to repay the financing.

f. Other than as identified in this section, no public entity, including the State of New Jersey or any political subdivision thereof, may issue bonds to finance any C-PACE program, except to the extent the authority may issue bonds pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.).

10. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to read as follows:

C.40:56-1.4 Clean energy special assessment, financing by municipality.

1. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement and may provide by ordinance for a "clean energy special assessment" to be imposed on a property within the municipality, if the owner of the property requests the assessment in order to install such systems or improvements. Each improvement on an individual property shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby. The clean energy special assessment shall be payable in quarterly installments. The terms of the clean energy special assessment shall be in accordance with the terms of the financing provided by the municipality pursuant to section 2 of P.L.2011, c.187 (C.40:56-13.1).

b. Notwithstanding the provisions of subsection a. of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept, and a municipality shall not submit, an application to undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic Development Authority has published on its Internet website all the items pursuant to subsection a. of section 5 of P.L.2021, c.201 (C.34:1B-378). The Director of Local Government Services in the Department of Community Affairs shall continue to process any application submitted prior to that date, and a municipality shall continue its undertaking approved prior to that date and any undertaking for which an application was pending on that date that is approved on or after that date.

c. All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L.2021, c.201 (C.34:1B-374 et al.).

11. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to read as follows:

C.40:56-13.1 Clean energy special assessment, financing.

2. a. (1) Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, a municipality may adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners and to authorize the issuance at public or private sale of non-recourse bonds as further provided herein. The governing body may apply to a county improvement authority that issues bonds pursuant to paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2). Funds for the purchase and installation of renewable energy systems and energy efficiency improvements shall be loaned to property owners in exchange for a clean energy special assessment on the property pursuant to section 1 of P.L.2011, c.187 (C.40:56-1.4), to be paid quarterly. In the case of financing provided by bonds issued by a county improvement authority, the clean energy special assessment shall be used to repay the bonds. The bonds issued by a county improvement authority pursuant to this section shall be issued as non-recourse obligations of the authority and shall not be considered to be direct and general obligations of the authority. In the case of financing provided by the municipality through the issuance of municipal bonds, the clean energy special assessment shall

be used to repay the bonds. The bonds issued by a municipality pursuant to this section shall be issued as non-recourse obligations of the municipality and shall not be considered to be direct and general obligations of the municipality. Any bonds issued or authorized by a municipality pursuant to this section shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq. A property owner who purchases and installs a renewable energy system under the program may also assign any solar renewable energy certificates, transition renewable energy certificates, or other renewable energy credits that accrue to the property owner from the operation of the system to the municipality or the county improvement authority to repay the loan for the system. The Director of Local Government Services in the Department of Community Affairs shall coordinate efforts with the Board of Public Utilities to ensure that the amount of financing made available by local programs authorized pursuant to this act is in accordance with limits set from time to time by the Board of Public Utilities in order to ensure that local programs further the goals of the Office of Clean Energy in the Board of Public Utilities.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept and a municipality shall not submit an application for approval of an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic Development Authority has published on its Internet website all of the items pursuant to subsection a. of section 5 of P.L.2021, c.201 (C.34:1B-378). The Director of Local Government Services in the Department of Community Affairs shall continue to process any application submitted prior to that date, and a municipality shall adopt any ordinance approved prior to that date and any ordinance for which an application was pending on that date that is approved on or after that date.

(3) All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L.2021, c.201 (C.34:1B-374 et al.).

b. As used in this section:

"Solar renewable energy certificate" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

"Transition renewable energy certificate" shall have the same meaning as set forth in section 2 of P.L.2021, c.201 (C.34:1B-375).

12. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to read as follows:

C.40:56-13.2 Amounts of money to be expended for improvements established.

3. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may establish the amounts of money to be expended by the municipality for the improvements authorized in sections 1 and 2 of P.L.2011, c.187 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may be raised by the issuance of clean energy special assessment bonds by the municipality. In making the appropriation, the governing body may designate the particular projects to be financed to which the moneys shall be applied.

b. Clean energy special assessments and bonds issued to finance them shall be issued and shall be generally subject to R.S.40:56-21 et seq., as the director shall determine to be applicable.

c. The director is authorized and empowered to take such action as deemed necessary and consistent with the intent of this act to implement its provisions.

d. Notwithstanding the provisions of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept, and the governing body of a municipality shall not submit an application pursuant to subsection a. of this section after the date the Economic Development Authority has published on its Internet website all of the items pursuant to subsection a. of section 5 of P.L.2021, c.201 (C.34:1B-378). The Director of Local Government Services in the Department of Community Affairs or a municipality shall continue to process any application submitted prior to that date, and an application approved by a municipality prior to that date shall be implemented.

e. All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L.2021, c.201 (C.34:1B-374 et al.).

13. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

C.40:37A-54 Purposes.

11. a. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50 percent of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of

garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A county improvement authority shall also have as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units. A county improvement authority shall also have as its purpose the administration, on behalf of an authorized municipality or county, of a local C-PACE program as defined in section 2 of P.L.2021, c.201 (C.34:1B-375) and to issue bonds to finance a C-PACE project for a local C-PACE program or the Garden State C-PACE program pursuant to section 9 of P.L.2021, c.201 (C.34:1B-382).

b. In a fiscal year in which a public health emergency, pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both has been declared by the Governor in response to COVID-19 and during the next following fiscal year, a county improvement authority shall also have as its purpose the pooling of special emergency notes issued by the county or any beneficiary county, or by any local governmental unit within the county or any beneficiary county, pursuant to N.J.S.40A:4-55 for purposes of financing a special emergency appropriation authorized for the purpose set forth in subsections l. and m. of N.J.S.40A:4-53.

14. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to read as follows:

C.40:37A-55 Body politic and corporate; powers and duties.

12. Every authority shall be a public body politic and corporate constituting a political subdivision of the State established as an instrumentality exercising public and essential governmental functions to provide for the public convenience, benefit and welfare and shall

have perpetual succession and, for the effectuation of its purposes, have the following additional powers:

(a) To adopt and have a common seal and to alter the same at pleasure;

(b) To sue and be sued;

(c) To acquire, hold, use and dispose of its facility charges and other revenues and other moneys;

(d) To acquire, rent, hold, use and dispose of other personal property for the purposes of the authority;

(e) Subject to the provisions of section 26 of this act, to acquire by purchase, gift, condemnation or otherwise, or lease as lessee, real property and easements or interests therein necessary or useful and convenient for the purposes of the authority, whether subject to mortgages, deeds of trust or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the authority; provided that the authority may dispose of such property at any time to any governmental unit or person if the authority shall receive a leasehold interest in the property for such term as the authority deems appropriate to fulfill its purposes;

(f) Subject to the provisions of section 13 of this act, to lease to any governmental unit or person, all or any part of any public facility for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon;

(g) To enter into agreements to lease, as lessee, public facilities for such term and under such conditions as the authority may deem necessary and desirable to fulfill its purposes, and to agree, pursuant thereto, to be unconditionally obligated to make payments for the term of the lease, without set-off or counterclaim, whether or not the public facility is completed, operating or operable, and notwithstanding the destruction of, damage to, or suspension, interruption, interference, reduction or curtailment of the availability or output of the public facility to which the agreement applies;

(h) To extend credit or make loans to any governmental unit or person for the planning, design, acquisition, construction, equipping and furnishing of a public facility, upon the terms and conditions that the loans be secured by loan and security agreements, mortgages, leases and other instruments, the payments on which shall be sufficient to pay the principal of and interest on any bonds issued for the purpose by the authority, and upon such other terms and conditions as the authority shall deem reasonable;

(i) Subject to the provisions of section 13 of this act, to make agreements of any kind with any governmental unit or person for the use or operation of all or any part of any public facility for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon;

(j) (1) To borrow money and issue negotiable bonds or notes or other obligations and provide for and secure the payment of any bonds and the rights of the holders thereof, and to purchase, hold and dispose of any bonds;

(2) To issue bonds, notes or other obligations to provide funding to a municipality that finances the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as provided in section 2 of P.L.2011, c.187 (C.40:56-13.1);

(3) To issue bonds, notes, or other obligations to finance a C-PACE project for a local C-PACE program pursuant to section 9 of P.L.2021, c.201 (C.34:1B-382);

(k) To apply for and to accept gifts or grants of real or personal property, money, material, labor or supplies for the purposes of the authority from any governmental unit or person, and to make and perform agreements and contracts and to do any and all things

necessary or useful and convenient in connection with the procuring, acceptance or disposition of such gifts or grants;

(l) To determine the location, type and character of any public facility and all other matters in connection with all or any part of any public facility which it is authorized to own, construct, establish, effectuate or control;

(m) To make and enforce bylaws or rules and regulations for the management and regulation of its business and affairs and for the use, maintenance and operation of any public facility, and to amend the same;

(n) To do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contract with any governmental unit or person;

(o) To acquire, purchase, construct, lease, operate, maintain and undertake any project and to fix and collect facility charges for the use thereof;

(p) To mortgage, pledge or assign or otherwise encumber all or any portion of its revenues and other income, real and personal property, projects and facilities for the purpose of securing its bonds, notes and other obligations or otherwise in furtherance of the purpose of this act;

(q) To extend credit or make loans to redevelopers for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing any redevelopment project or redevelopment work;

(r) To conduct examinations and investigations, hear testimony and take proof, under oath at public or private hearings of any material matter, require the attendance of witnesses and the production of books and papers and issue commissions for the examination of witnesses who are out of the State, unable to attend, or excused from attendance;

(s) To authorize a committee designated by it consisting of one or more members, or counsel, or any officer or employee to conduct any such investigation or examination, in which case such committee, counsel, officer or employee shall have power to administer oaths, take affidavits and issue subpoenas or commissions;

(t) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this act subject to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.);

(u) To pool loans for any local governmental units within the county or any beneficiary county that are refunding bonds and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the authority to achieve more favorable interest rates and terms for those local governmental units; and

(v) To act as and exercise the powers of a land bank entity pursuant to P.L.2019, c.159 (C.40A:12A-74 et al.) for any municipality situated within the county pursuant to a land banking agreement approved by an ordinance adopted by the municipal governing body.

15. This act shall take effect immediately, except that neither the Garden State C-PACE program nor any local C-PACE program established pursuant to P.L.2021, c.201 (C.34:1B-374 et al.) shall be operable until the authority has published on its Internet website all of items required pursuant to subsection a. of section 5 of P.L.2021, c.201 (C.34:1B-378).

Approved August 24, 2021.

ASSEMBLY, No. 2374

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

Sponsored by:
Assemblyman RAJ MUKHERJI
District 33 (Hudson)
Assemblywoman NANCY J. PINKIN
District 18 (Middlesex)

SYNOPSIS

Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use by municipalities of voluntary special assessments for certain property owners.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 7/20/2020)

AN ACT concerning the implementation of renewable energy and energy efficiency systems and water conservation, flood and hurricane resistance projects, energy storage, and microgrids, supplementing Titles 34 and 40 of the Revised Statutes, and amending P.L.2011, c.187 and P.L.1960, c.183.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) The Legislature finds and declares it to be the public policy of this State that:

a. Investing in water conservation, stormwater management, renewable energy, and energy efficiency improvements to real property is beneficial over time, and flood and hurricane mitigation projects for existing properties is a critical component in conserving natural resources and mitigating the effects of floods and hurricanes, and upfront costs are a barrier to investing in such major energy, water, and resiliency improvements;

b. There are few financing options for such improvements that combine easy qualification, an attractive interest rate, and a relatively long repayment term;

c. Property accessed clean energy, or "PACE," lending, in which repayment is by way of a special assessment on the real property to which the improvement was made, provides an innovative way for property owners to finance renewable energy, energy and water efficiency, and other eligible improvements which, in turn, results in property owners saving a significant sum in energy costs, helps communities create local jobs, results in lower mortgage foreclosures, and stimulates local economies and lower emissions;

d. PACE financing will enable New Jersey municipalities to contribute toward meeting community sustainability, greenhouse gas emissions reductions, and energy goals, and will provide a valuable service to the citizens of their communities; and

e. PACE financing, and the powers conferred and expenditures made pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), serve a valid public purpose and enactment of P.L. , c. (C.) (pending before the Legislature as this bill) is expressly declared to be in the public interest.

2. (New section) As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Authority" means the New Jersey Economic Development Authority, and for purposes of P.L. , c. (C.) (pending before the Legislature as this bill) shall also include other related State agencies and or third-party administrators as may be engaged by the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

authority for the purposes of providing the services authorized by the rules and regulations adopted pursuant to P.L. , c. (C.) (pending before the Legislature as this bill).

"Energy efficiency improvement" means an improvement to reduce energy consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy, including, but not limited to: air sealing; installation of insulation; installation of energy-efficient electrical, heating, cooling or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

"Flood resistant construction project" means a project that mitigates the likelihood of substantial flood damage, including but not limited to the installation of break-away walls and building elevation alterations.

"Hurricane resistant construction project" means an improvement that brings a component of a structure into compliance with the standards for a "wind-borne debris region" adopted pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or into compliance with a successor standard under that code.

"Microgrid" means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid and that connects and disconnects from the grid to enable it to operate when both connected to, or independent of, the grid.

"NJPACE program" means the program established by the authority pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) in which a municipality may elect to participate.

"PACE" is an acronym for the term "property assessed clean energy."

"PACE project" means any category of improvement that the authority identifies pursuant to rules or regulations, including but not limited to an energy efficiency improvement, renewable energy system, energy storage, microgrid, water conservation project, stormwater management system, zero emission vehicle charging infrastructure, flood resistant construction project, and hurricane resistant construction project which is undertaken by the owner of real property located within a participating municipality and permanently affixed to such property.

"PACE special assessment" means a local improvement assessment, in accordance with chapter 56 of Title 40 of the Revised Statutes, imposed by a participating municipality on a property, with the consent of the owner of such property, as a means of securing a loan made by a lender to finance a PACE

project at such property, payments in respect of which assessment are collected by the participating municipality and remitted to the lender.

"Participating municipality" means a municipality that has adopted an ordinance in the form prescribed by the authority authorizing its participation in the NJPACE program, as well as taken such other actions as the authority may establish in rules and regulations adopted pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), including designating the authority to manage, oversee, and administer its participation in the program implementation or any combination thereof.

"Private entity" means a private for-profit or non-profit corporation, partnership, or any other form of private organization, including but not limited to a "related competitive business segment of a public utility holding company," or a "related competitive business segment of an electric public utility or gas public utility," as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), so long as the organization is not subject to the jurisdiction of the Board of Public Utilities.

"Project costs" mean the costs associated with a PACE project, and shall include: the hard costs of purchasing, constructing or acquiring the project; soft costs, including but not limited to engineering fees, inspection fees and permits, and costs relating to the measurement and verification of project savings; and costs of utilizing the NJPACE program, including but not limited to program fees, closing costs, and interest and other financing charges.

"Property" means an industrial, agricultural, or commercial property, or a residential property with five or more dwelling units, within a municipality upon which a PACE special assessment is imposed at the request of a property owner in connection with a PACE project.

"Property owner" means the owner of a property within a municipality who requests that a PACE special assessment be imposed on the property in connection with a PACE project.

"Renewable energy system" means an improvement in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bio-mass, or wind energy, together with such other fuels and energy sources that the authority, after consultation with the Board of Public Utilities, may determine pursuant to rules and regulations adopted pursuant to P.L. , c. (C.) (pending before the Legislature as this bill).

"Solar renewable energy certificate" means the same as defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Stormwater management system" means the same as defined in section 3 of P.L.2019, c.42 (C.40A:26B-3).

"Water conservation project" means an improvement that reduces water consumption, increases the efficiency of water use, or reduces water loss.

3. (New section) a. The authority shall establish a NJPACE program to facilitate the financing of PACE projects that fulfills the requirements enumerated herein, as well as those rules, regulations, guidelines, and other requirements established by the authority as part of the administration of the program. The NJPACE program shall consist of, among other things, the implementation of PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a PACE special assessment to be imposed on properties within the municipality, if the owner of a property requests the PACE special assessment in order to undertake and finance a PACE project. PACE projects on an individual property subject to the same PACE special assessment agreement collectively shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby.

b. The authority may enter into a memorandum of agreement with one or more State government agencies or instrumentalities whereby any of the powers the authority may exercise or responsibilities it must fulfill pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) may be exercised or fulfilled, as the case may be, by such agency or instrumentality, and any fund that may be used for administrative expenses by the authority may be used by such agency or instrumentality in exercising such powers or fulfilling such responsibilities.

c. The authority may also hire and set the compensation of one or more private parties, whether for-profit or not-for-profit, to assist the authority in its administration of the program pursuant to a competitive bidding process in accordance with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill). The authority may delegate to such one or more private parties such matters as may be determined by rules and regulations adopted by the authority, provided that under no circumstances may the authority delegate its responsibility for general oversight of the NJPACE program.

d. The authority may establish a loan loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by lenders providing PACE loans, in order to improve the availability and financial terms of such financing for PACE projects for property owners.

e. The authority may purchase PACE loans from lenders and hold them until maturity, or resell them to other private parties, either individually or aggregated in securitized form.

f. Pursuant to the purpose and objectives outlined in P.L. , c. (C.) (pending before the Legislature as this bill), and with

respect to the responsibilities of administering the NJPACE program, the authority shall issue rules and regulations and guidelines further establishing the terms and conditions under which financing may be provided under the program, in consultation with the Board of Public Utilities and the Division of Local Government Services in the Department of Community Affairs.

g. The authority shall determine compliance with the underwriting criteria and other requirements set forth in P.L. , c. (C.) (pending before the Legislature as this bill), and the rules, regulations, and guidelines adopted pursuant thereto, and shall include an accounting of the NJPACE Program in the annual report required each year pursuant to subsection a. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill).

4. (New section) a. Eighteen months after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), and annually thereafter, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report describing the implementation and operation of the NJPACE program, including program receipts, disbursements, and earnings. The annual report may also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

b. No later than five years after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report that reviews and assesses implementation of the NJPACE program. The report shall evaluate the NJPACE program, and review foreclosure rates, cost-effectiveness of PACE projects, reasonableness of costs to property owners, and any other factors the authority deems appropriate. The report shall also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

c. The authority shall post all reports prepared pursuant to this subsection on its Internet website.

5. (New section) a. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the authority may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority determines to be necessary to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), which rules and regulations shall be effective for a period not exceeding 360 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). Such rules and regulations shall, thereafter, be amended, adopted,

or readopted by the authority in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The rules and regulations shall include, but not be limited to:

(1) the necessary application requirements and procedures for a property owner seeking PACE financing and a lender seeking to make PACE loans;

(2) the necessary qualifications and requirements for a proposed PACE project, including the qualifications and requirements for projects other than energy efficiency improvements and renewable energy systems, which may include, without limitation, resiliency-related projects, water efficiency improvements, and energy storage, microgrid, and combined heat and power projects;

(3) the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the NJPACE program;

(4) a requirement that all existing lien holders on a property be given notice prior to a PACE special assessment and lien being filed in connection with that property, and that all property owners seeking a PACE loan receive consent of the existing mortgage holders on the property prior to the authority's approval of the PACE loan;

(5) a requirement that term of the PACE loan be no longer than the forecast life of the improvements; and

(6) forms of agreement and other documents necessary for the efficient administration of the NJPACE program.

b. Prior to adoption of the rules and regulations pursuant to subsection a. of this section, the authority shall organize and hold a public stakeholder meeting regarding the rules and regulations, after providing, by publication of a notice not less than 20 days prior to such meeting including the time, date, and place thereof.

c. The NJPACE program shall not be operational and available for the participation of municipalities and property owners until rules and regulations, and program guidelines have initially been adopted by the authority pursuant to subsection a. of this section.

6. (New section) a. Notwithstanding any provision of chapter 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.), or any other law to the contrary, a municipality shall follow the following process to establish and implement a NJPACE program pursuant to P.L. , c. (C.) (pending before the Legislature as this bill):

(1) A municipal ordinance shall establish a form of PACE special assessment agreement to be entered into with NJPACE program participants, and identify whether the NJPACE program will be implemented, financed, and managed by the municipality, the county, or by a county improvement authority, or by another public entity or private entity.

(2) The municipal ordinance required by the authority to be adopted by a municipality shall prescribe criteria for participation in the NJPACE program at the time of the initial financing, which criteria shall include, at a minimum, the following:

(a) that PACE financing recipients are either the legal owners of the underlying property or provide the written consent of the legal owners of the underlying property, are current on mortgage and property tax payments with respect to the underlying property, and are not the subject of a default or in bankruptcy proceedings;

(b) an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project; and

(c) require that an appraisal be conducted, if one is not conducted by the lender for the PACE project.

The ordinance may establish standards for the maximum amount, or duration of PACE special assessments, or both, but in no event shall the maximum duration of a PACE special assessment exceed 30 years.

(3) The municipal ordinance shall require that a disclosure form summarizing PACE financing risks provided by the NJPACE program administrator and the lender be signed by the owner of each property. The disclosure form shall include, but need not be limited to, the following information:

(a) risks from incorrect or defective improvement design or construction of the PACE project;

(b) risk of foreclosure for failure to pay the special assessment;

(c) imposition of charges or other enforcement for delinquent PACE special assessment payments in the same manner as delinquent real estate taxes;

(d) lack of guarantee of energy savings from the PACE project;

(e) likelihood that completed PACE projects may require ongoing maintenance to meet performance targets;

(f) probability that changes in property occupancy or energy costs may affect energy savings expected from the project;

(g) lack of guarantee by the NJPACE program or NJPACE program administrator of availability of local, State, or federal tax credits or other incentives; and

(h) amount of additional fees for actual municipal costs that will be added to the PACE special assessment.

(4) The municipal ordinance shall also require that the NJPACE program include the following consumer protection provisions:

(a) the authority of the property owner to cancel the PACE contract within three business days of signing it;

(b) a requirement to provide information to the property owner on the total cost of the PACE project for the life of the agreement including interest or fees to be paid, total number of payments,

payment frequency, amount of each payment, and warranty or maintenance obligations; and

(c) a prohibition restricting specific monetary or percentage estimates on property value changes as a result of the PACE project.

b. The amount of a PACE special assessment shall be a specific amount, not to exceed the project costs of the PACE project. The specific amount of a PACE special assessment, which shall be consented to by the property owner by its execution of a PACE special assessment agreement in the form promulgated by the authority, shall be deemed the benefit conferred with respect to the property and shall be in lieu of the amount being determined by any other procedures set forth in Title 40 of the Revised Statutes otherwise applicable to determining the actual benefit conferred on the property. No other confirmation or determination of the amount of the PACE special assessment, including, but not limited to the procedure set forth at R.S.40:56-30, shall be required.

c. Subject to the written consent of existing mortgage holders, the form of which shall be determined by the authority in its rules regulations, or guidelines, a PACE special assessment shall be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded, on and after the date of recordation of the agreement. Upon recordation of the PACE special assessment agreement in the land records of the county in which the property is located, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, without any additional notice, recording, filing, continuation filing, or action, until payment in full of the PACE special assessment, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any other proceeding which does not impair the substantial rights of the owner or owners or other person or persons having a lien upon or interest in any such real estate. Any confirmation of the amount of the assessment by the governing body or by the court shall be considered as determining the amount of the existing lien and not as establishing the lien. All assessments shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

A PACE special assessment shall not be considered an "equivalent consensual security interest" for the purposes of the "New Jersey Residential Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-51 et seq.). A PACE special assessment shall be treated

as a municipal lien rather than a contractual lien for all purposes of law.

d. Funds to implement a PACE project may be disbursed to the property owner at execution of the PACE special assessment agreement, or may be disbursed in installments over time. Such funds shall not constitute public funds, and shall not be subject to the laws governing public funds, including but not limited to laws regarding the receipt, expenditure, deposit, investment, or appropriation of the same. A PACE project shall not be considered a "facility" or "public facility" within the meaning of the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.). Payments of PACE special assessments shall commence as set forth in the PACE special assessment agreement. To the extent that upon completion of the PACE project, funds remain which have not been disbursed to the property owner for a PACE project, those funds on hand shall be used to reduce the amount of the PACE special assessment.

e. Except as provided in subsection g. of this section, if any payment of a PACE special assessment is not made within 10 days after the time when that payment shall have become due, or later, consistent with any grace period provided or extended by a municipality for the payment of property tax bills, interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the municipality, and collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the municipality shall enforce collection of its unpaid property taxes through accelerated tax sale. However, the balance due on a PACE special assessment shall not be subject to acceleration in the event of a default in payment. Notwithstanding any other provision of law, in the event that any lien on the property shall be exposed to tax sale, pursuant to the "tax sale law," R.S.54:5-1 et seq., and any such lien is struck off and sold to the municipality, the PACE special assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, and provided that, notwithstanding the obligations of a municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5-53.1), while the municipality holds such lien or owns such property, the municipality shall not be responsible for or required to make any payment in furtherance of or to satisfy any such PACE special assessment.

f. PACE special assessments may be assigned directly by the municipality, and any assignee thereof, as security for the repayment of any obligations of a property owner to a lender that has provided a PACE loan, to such lender, or any assignee thereof.

Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the municipality's right, title, and interest in and to the PACE special assessment, along with the rights and remedies provided to the municipality under the PACE special assessment agreement, including, but not limited to, the right to direct the collection of payments due. PACE special assessments assigned as provided hereunder shall not be included in the general funds of the municipality, or be subject to any laws regarding the receipt, deposit, investment, or appropriation of public funds, and shall retain such status notwithstanding enforcement of the assessment by the municipality or assignee as provided herein. In the case of a municipality which is otherwise subject to tax or revenue sharing pursuant to law and which assigns PACE special assessments as set forth in this section, such PACE special assessments shall not be considered part of the tax or revenue sharing formula or calculation of municipal revenues for the purpose of determining whether that municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool.

g. Notwithstanding any other law to the contrary, in any foreclosure action due to nonpayment or late payment of a PACE special assessment for property in the NJPACE program, service of the complaint on all parties shall be made by personal service, hand-delivered by the sheriff or personal process server, and the procedure for obtaining a final judgment shall conform to the procedures and requirements of the in personam foreclosure process.

7. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to read as follows:

1. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement and may provide by ordinance for a "clean energy special assessment" to be imposed on a property within the municipality, if the owner of the property requests the assessment in order to install such systems or improvements. Each improvement on an individual property shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby. The clean energy special assessment shall be payable in quarterly installments. The terms of the clean energy special assessment shall be in accordance with the terms of the financing provided by the municipality pursuant to section 2 of P.L.2011, c.187 (C.40:56-13.1).

b. Notwithstanding the provisions of subsection a. of this section to the contrary, the Director of Local Government Services in the

Department of Community Affairs shall not approve an application and a municipality shall not undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.187, s.1)

8. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to read as follows:

2. a. (1) Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, a municipality may adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners. The governing body may apply to a county improvement authority that issues bonds pursuant to paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2). Funds for the purchase and installation of renewable energy systems and energy efficiency improvements shall be loaned to property owners in exchange for a clean energy special assessment on the property pursuant to section 1 of P.L.2011, c.187 (C.40:56-1.4), to be paid quarterly. In the case of financing provided by bonds issued by a county improvement authority, the clean energy special assessment shall be used to repay the bonds. In the case of financing provided by the municipality through the issuance of municipal bonds, the clean energy special assessment shall be used to repay the bonds. A property owner who purchases and installs a renewable energy system under the program may also assign any solar renewable energy certificates or other renewable energy credits that accrue to the property owner from the operation of the system to the municipality or the county improvement authority to repay the loan for the system. The Director of Local Government Services in the Department of Community Affairs shall coordinate efforts with the Board of Public Utilities to ensure that the amount of financing made available by local programs authorized pursuant to this act is in accordance with limits set from time to time by the Board of Public Utilities in order to ensure that local programs further the goals of the Office of Clean Energy in the Board of Public Utilities.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not approve an application and a municipality shall not adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by

property owners pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

b. As used in this section, "solar renewable energy certificate" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

(cf: P.L.2011, c.187, s.2)

9. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to read as follows:

3. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may establish the amounts of money to be expended by the municipality for the improvements authorized in sections 1 and 2 of P.L.2011, c.187 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may be raised by the issuance of clean energy special assessment bonds by the municipality. In making the appropriation, the governing body may designate the particular projects to be financed to which the moneys shall be applied.

b. Clean energy special assessments and bonds issued to finance them shall be issued and shall be generally subject to R.S.40:56-21 et seq., as the director shall determine to be applicable.

c. The director is authorized and empowered to take such action as deemed necessary and consistent with the intent of this act to implement its provisions.

d. Notwithstanding the provisions of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not approve an application pursuant to subsection a. of this section after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.187, s.3)

10. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking

facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50 **[**%**]** percent of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in **[**this act**]** the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing,

including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of **[**this act**]** the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A county improvement authority shall also have as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units. A county improvement authority shall also have as its purpose the implementation, management, oversight, and administration of a NJPACE program, as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2002, c.42, s.8)

11. This act shall take effect immediately, except that the NJPACE program shall be inoperable until the adoption of the rules and regulations required pursuant to subsection a. of section 5 of this act.

STATEMENT

This bill would require the Economic Development Authority (EDA) to establish a "NJPACE program."

"PACE" is an acronym for the term "property assessed clean energy." As defined in the bill, "PACE project" means any category of improvement that the EDA identifies pursuant to rules or regulations, including but not limited to an energy efficiency improvement, renewable energy system, energy storage, microgrid, water conservation project, stormwater management system, zero emission vehicle charging infrastructure, flood resistant construction project, and hurricane resistant construction project

which is undertaken by the owner of real property located within a participating municipality and permanently affixed to such property.

The NJPACE program, to be established by the EDA pursuant to this bill, would consist of, among other things, the implementation of PACE projects to be undertaken by property owners as local improvements and the provision by municipal ordinance for a PACE special assessment to be imposed on properties within the municipality, if the owner of a property requests the PACE special assessment in order to undertake and finance a PACE project. The special assessment would be used to repay the loan for the PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. PACE projects on an individual property subject to the same PACE special assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

The bill provides that the EDA may enter into a memorandum of agreement with one or more State government agencies or instrumentalities authorizing the agency or instrumentality to exercise the EDA's powers or responsibilities under the bill. The bill also provides that the EDA may hire and set the compensation for one or more private parties, whether for-profit or not-for-profit, to assist in the administration of the NJPACE program pursuant to a competitive bidding process. However, the EDA could not delegate its responsibility for general oversight of the NJPACE program.

The bill provides that the EDA may establish a loan loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by lenders providing PACE loans, in order to improve the availability and financial terms of financing for PACE projects for property owners. In addition, the EDA may purchase PACE loans from lenders and hold them until maturity, or resell them to other private parties, either individually or aggregated in securitized form.

The bill requires the EDA to adopt rules and regulations and guidelines further establishing the terms and conditions under which financing may be provided under the program, in consultation with the Board of Public Utilities and the Division of Local Government Services in the Department of Community Affairs.

The bill requires the EDA to adopt rules and regulations to implement the NJPACE program, which would include, but not be limited to:

(1) the application requirements and procedures for a property owner seeking PACE financing and a lender seeking to make PACE loans;

(2) the qualifications and requirements for a proposed PACE project, including the qualifications and requirements for projects other than energy efficiency improvements and renewable energy

systems, which may include, without limitation, resiliency-related projects, water efficiency improvements, and energy storage, microgrid, and combined heat and power projects;

(3) the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the NJPACE program;

(4) a requirement that all existing lien holders on a property be given notice prior to a PACE special assessment and lien being filed in connection with that property, and that all property owners seeking a PACE loan receive consent of the existing mortgage holders on the property prior to the EDA's approval of the PACE loan;

(5) a requirement that term of the PACE loan be no longer than the forecast life of the improvements; and

(6) forms of agreement and other documents necessary for the efficient administration of the NJPACE program.

The bill would require the EDA, 18 months after the date the bill is enacted into law, and annually thereafter, to prepare and submit a report to the Governor and the Legislature describing the implementation and operation of the NJPACE program, including program receipts, disbursements, and earnings. In addition, the bill requires the EDA, no later than five years after the date the bill is enacted into law, to prepare and submit a report to the Governor and the Legislature, that reviews and assesses implementation of the NJPACE program. This report would evaluate the NJPACE program, and review foreclosure rates, cost-effectiveness of PACE projects, reasonableness of costs to property owners, and any other factors the EDA deems appropriate, and also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

Further, section 6 of the bill establishes the process for a municipality to establish and implement a NJPACE program pursuant to the bill and sets forth the requirements to be included in a municipal ordinance. The municipal ordinance would, at a minimum:

(1) require that PACE financing recipients are either the legal owners of the underlying property or provide the written consent of the legal owners of the underlying property, are current on mortgage and property tax payments with respect to the underlying property, and are not the subject of a default or in bankruptcy proceedings;

(2) establish an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project;

(3) require that a disclosure form summarizing PACE financing risks provided by the NJPACE program administrator and the lender be signed by the owner of each property; and

(4) include certain specified consumer protection provisions.

The municipal ordinance may establish standards for the maximum amount, or duration of a PACE special assessment, or both, but in no event would the maximum duration of a PACE special assessment exceed 30 years. The amount of a PACE special assessment would be a specific amount, not to exceed the project costs of the PACE project.

A PACE special assessment would be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded, on and after the date of recordation of the agreement. In addition, a PACE special assessment would be treated as a municipal lien rather than a contractual lien for all purposes of law.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date of enactment of this bill into law.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation, management, oversight, and administration of a NJPACE program pursuant to the bill.

ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2374

STATE OF NEW JERSEY

DATED: JULY 20, 2020

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2374.

This committee substitute would require the New Jersey Economic Development Authority (authority) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: the acquisition, construction, lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The Garden State C-PACE program would consist of, among other things, the development of uniform assessment documents for the direct financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien

on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 180 days after the bill is enacted into law, the authority would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a municipality would apply to the authority for approval of a local C-PACE program ordinance.

The bill provides that the authority may contract with one or more third party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the authority may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines and any local C-PACE program guidelines authorized by resolution of the governing body of a participating municipality. The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that municipality. In a municipality that has established a local C-PACE program, C-PACE projects may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established a local C-PACE program, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A municipality seeking to establish a local C-PACE program would be required to submit an application to the authority for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the authority to charge a municipality a fee to review a proposed local C-PACE program ordinance, and would authorize the authority and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing for the implementation of C-PACE projects, as well refinancing of an investment in an existing improvement that qualifies as a C-PACE project, if the existing improvement was completed no more than three years prior to the submission of an application to the Garden State C-PACE program or local C-PACE program, for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a participating municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects.

No later than 18 months after the authority establishes the Garden State C-PACE program and annually thereafter, the authority would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program and any local C-PACE programs. In addition, no later than five years after the authority establishes the Garden State C-PACE program, the authority would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program and any local C-PACE programs, including a review of foreclosure rates and any other factors the authority deems appropriate.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the authority publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2374

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 27, 2020

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 2374 ACS.

This committee substitute would require the New Jersey Economic Development Authority (authority) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: the acquisition, construction, lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The Garden State C-PACE program would consist of, among other things, the development of uniform assessment documents for the direct financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien

on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 180 days after the bill is enacted into law, the authority would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a municipality would apply to the authority for approval of a local C-PACE program ordinance.

The bill provides that the authority may contract with one or more third party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the authority may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines and any local C-PACE program guidelines authorized by resolution of the governing body of a participating municipality. The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that municipality. In a municipality that has established a local C-PACE program, C-PACE projects may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established a local C-PACE program, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A municipality seeking to establish a local C-PACE program would be required to submit an application to the authority for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the authority to charge a municipality a fee to review a proposed local C-PACE program ordinance, and would authorize the authority and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing for the implementation of C-PACE projects, as well refinancing of an investment in an existing improvement that qualifies as a C-PACE project, if the existing improvement was completed no more than three years prior to the submission of an application to the Garden State C-PACE program or local C-PACE program, for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a participating municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects.

No later than 18 months after the authority establishes the Garden State C-PACE program and annually thereafter, the authority would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program and any local C-PACE programs. In addition, no later than five years after the authority establishes the Garden State C-PACE program, the authority would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program and any local C-PACE programs, including a review of foreclosure rates and any other factors the authority deems appropriate.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the authority publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

COMMITTEE AMENDMENTS:

The committee amendments make technical corrections to remove duplicative language and correct a reference to the local C-PACE program, and clarify the fee that a municipality may charge a property owner for the review of an application for direct financing in a local C-PACE program.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a municipality a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA and a participating municipality may also charge the property owner a one-time fee, not to exceed $75,000 or one percent of the amount financed, to review a C-PACE project application.

The bill also permits a participating municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the participating municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

The OLS notes that the bill is permissive with respect to a municipality's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2374

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 2021

The Senate Environment and Energy Committee favorably reports Assembly Bill No. 2374 (1R/ACS) with committee amendments.

This bill, as amended by the committee, would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the

implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

The committee amendments to the bill would:

(1) revise the findings and declarations section;

(2) replace the term "administration agreement" with the term "Garden State program agreement" and include additional provisions in the definition of "Garden State program agreement";

(3) restrict the municipalities that are authorized to develop local C-PACE programs to those in the top third in terms of population, to be known as "authorized municipalities" under the bill;

(4) provide that certain commercial lending institutions can act as "capital providers," as that term is defined by the bill;

(5) insert new provisions concerning the types of new construction projects that would be considered C-PACE projects under the bill, and make other revisions to the definition of "C-PACE project";

(6) add a definition for the term "launch date," to be used as a deadline for certain activities required under the bill;

(7) authorize counties to develop local C-PACE programs, subject to certain conditions enumerated in section 6 of the bill;

(8) modify the definition of "participating municipality" to reflect the difference between the powers established by the bill for a municipality and for an "authorized municipality";

(9) provide that the EDA may implement an alternative definition of "project costs" in its program guidelines in connection with the financing of new construction;

(10) revise the definition of "property owner" to exclude certain lessees and to clarify the definition;

(11) clarify that property owners who use a C-PACE program to install renewable energy systems may transfer the associated transition renewable energy certificates (TRECs) to the entity that financed the installation, and add a definition for "transition renewable energy certificate";

(12) require authorized municipalities and counties to submit and publish certain reports on their local C-PACE programs, rather than the EDA;

(13) provide that the Garden State C-PACE program is to consist of the development of uniform assessment documents and program guidelines for the financing of C-PACE projects;

(14) clarify that the EDA may set the compensation of any third-parties hired to assist in the development of the Garden State C-PACE program;

(15) provide that the EDA may enter into a memorandum of agreement with one or more State government agencies or instrumentalities in order to fulfill its duties under the bill;

(16) provide that the EDA may establish a loss reserve, issue guarantees, or both, in order to facilitate the implementation of the bill;

(17) direct the EDA to establish the Garden State C-PACE program 270 days after the bill's effective date, rather than 180 days, and clarify that other activities authorized by the bill cannot commence until the EDA establishes the program;

(18) provide that the principal amount of a C-PACE assessment, when combined with mortgage and other lien obligations on a property may not exceed 90 (rather than 95) percent of the appraised value of the property;

(19) remove a requirement that the model opt-in ordinance, to be developed by the EDA, include certain provisions related to determining a property's value;

(20) insert provisions that explicitly require the EDA and certain counties and municipalities to develop C-PACE program guidelines, and specify additional requirements related to the consistency between the State and local guidelines;

(21) insert certain additional requirements for the content of the C-PACE program guidelines, including underwriting criteria, notice requirements, and loan-duration requirements;

(22) provide that the Garden State C-PACE program may be used for the financing of new construction upon previously unimproved real property;

(23) specify that properties with delinquent taxes, charges, or assessments are not eligible for a C-PACE assessment;

(24) remove a 10-day grace period for the payment of C-PACE assessments and instead provide that the grace period authorized by the relevant municipality may be used;

(25) provide that interest on a C-PACE assessment payment is in addition to any accrued interest and any amount fixed as a penalty for delinquency pursuant to the financing agreement between a property owner and a capital provider;

(26) make various clarifications related to the payment of interest and other penalties for delinquent C-PACE assessments;

(27) provide that a municipality may be compelled to enforce a lien through an action to foreclose on a property in order to satisfy a C-PACE assessment;

(28) clarify that capital providers are to be reimbursed in accordance with the "Eminent Domain Act of 1971," when a property is taken by eminent domain or condemnation, as authorized by the bill;

(29) add certain restrictions on the ability of a municipality or county to delegate the duties related to a C-PACE program to a private party or county improvement authority;

(30) require counties and municipalities seeking to establish a local C-PACE program to include their proposed program guidelines in their application to the EDA;

(31) provide that the EDA has 60 days to review applications from counties and municipalities, rather than 30 days;

(32) provide that EDA may oversee local C-PACE programs to ensure their compliance with the provisions of the bill;

(33) clarify that counties and municipalities that seek to amend their C-PACE programs must receive approval from the EDA;

(34) provide that counties and municipalities must incorporate into their local C-PACE program guidelines any revision made by the EDA to the Garden State C-PACE program guidelines immediately upon the publication of the revision on the EDA's website, although this requirement would not apply retroactively;

(35) remove certain caps on application fees, previously established by section 8 of the bill, that the EDA may charge to property owners who apply to participate in the Garden State C-PACE program;

(36) delete a provision that would have given municipalities explicit authority to charge an application fee to property owners who apply to participate in a local C-PACE program;

(37) provide that capital providers can fund C-PACE project costs by issuing bonds;

(38) provide that guaranties issued by the EDA under section 4 of the bill can be considered "financial assistance" pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1);

(39) include additional amendments to section 2 of P.L.2011, c.187 (C.40:56-13.1) to provide that property owners who use a clean energy special assessment program to install renewable energy systems may transfer the associated transition renewable energy certificates (TRECs) to the entity that financed the installation; and

(40) make other technical and clarifying changes to the bill.

This bill, as amended and reported by the committee, is identical to the Senate committee substitute for Senate Bill No. 1953, as also reported by the committee.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2374

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2021

The Senate Budget and Appropriations Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 2374 (2R), with committee amendments.

This bill, as amended by the committee, would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a “clean energy special assessment” to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

As amended, this bill is identical to Senate Bill No. 1953 (SCS/1R) which was also reported favorably, with amendments, by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments to the bill would:

(1) clarify that a county improvement authority would be authorized by the bill to issue bonds to finance a C-PACE project under the Garden State C-PACE program (as well as local C-PACE programs); and

(2) make other clarifying changes to the bill's language.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a county or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the

local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2374

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JULY 29, 2020

SUMMARY

Synopsis: Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use of voluntary special assessments by municipalities for certain property owners.

Type of Impact: Indeterminate annual increase in State expenditures; indeterminate potential impact on local finances.

Agencies Affected: New Jersey Economic Development Authority, local government units, and other public entities.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost		Indeterminate Annual Increase	
Local Finances		Indeterminate Potential Impact	

- The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

- Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

- To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a municipality a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA and a participating municipality may also charge the property owner a one-time fee, not to exceed $75,000 or one percent of the amount financed, to review a C-PACE project application.

- The bill also permits a participating municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the participating municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

- C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

- The OLS notes that the bill is permissive with respect to a municipality's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

BILL DESCRIPTION

This bill would require the EDA to establish the Garden State C-PACE program to finance the implementation of Property Assessed Clean Energy (PACE), including projects for commercial properties (C-PACE), by property owners that request to participate in the program. C-PACE projects could include an energy efficiency improvement or renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood and hurricane resistant construction improvement, C-PACE assessment on the heating and cooling system, or a power purchase agreement for a renewable energy system. Under the program, participating property owners would receive loan financing, the costs of which would be repaid through a C-PACE assessment, established by municipal ordinance, imposed on the property. The C-PACE assessment would be collected by the municipality in which the property is located and directed to the lender of the C-PACE loan.

Within 180 days of the effective date of the bill, the EDA is required to establish the C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) C-PACE program guidelines; and (4) the process by which a municipality applies to the authority for approval of a local C-PACE program ordinance. Additionally, the bill permits a participating municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the participating municipality in its implementation and administration, or a combination thereof, of the local C-PACE program. The municipality may delegate to one or more private parties or a county improvement authority such matters as the participating municipality determines. The bill also provides that the EDA may contract with one or more third-party administrators to assist the C-PACE program. However, the EDA may not delegate its responsibility for general oversight of the C-PACE program.

The bill authorizes the EDA to charge a municipality a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA and a participating municipality may also charge the property owner a one-time fee, not to exceed $75,000 or one percent of the amount financed, to review a C-PACE project application.

The bill also sets forth a process for municipalities to establish and implement the C-PACE program. Specifically, the bill authorizes the governing body of a municipality to submit an application to the authority for approval, and the application must contain: (1) a proposed local C-PACE program ordinance consistent with subsection b. of section 5 of the bill; and (2) acknowledgement that the municipality shall use the uniform assessment documents prepared by the authority.

The municipal ordinance may establish standards for the maximum duration of a C-PACE assessment, but in no event would the maximum duration exceed the weighted average useful life of the improvements in the C-PACE project or 30 years, whichever is less. The specific amount, and the terms of repayment of direct financing shall be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment. A C-PACE assessment would be a single, continuous first lien on the property against which the assessment agreement is recorded, on and after the date of recordation of the agreement. In addition, a C-PACE assessment would be treated as a municipal lien rather than a contractual lien for all purposes of the law.

The bill also requires the EDA, 18 months after the date of enactment, and no later than five years thereafter, to submit a report to the Governor and the Legislature reviewing and assessing the implementation of the C-PACE program and any local C-PACE programs. This report would also evaluate the C-PACE program, and review foreclosure rates, and any other factors the EDA deems appropriate, and also identify and recommend any legislative changes to the law authorizing the C-PACE program that may be necessary.

Under current law, the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a clean energy special assessment to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date of enactment of this bill into law.

The bill also authorizes municipalities and county improvement authorities to issue bonds based upon the terms set forth in the ordinance. The bill designs the C-PACE assessment program to be self-liquidating by which C-PACE program costs are borne only by property owners who benefit from the improvements. Revenues generated through the C-PACE assessment on the improved property would pay the lender of a C-PACE loan or the locality issuing bonds to finance the C-PACE program.

Lastly, the bill also clarifies that actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of certain sections of the bill would be unaffected by the bill’s enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates the bill may result in an indeterminate increase in annual State expenditures by requiring the EDA to establish and oversee the Garden State C-PACE program. To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a municipality a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA and a participating municipality may also charge the property owner a one-time fee, not to exceed $75,000 or one percent of the amount financed, to review a C-PACE project application. Without knowing the degree of participation in the C-PACE program, the OLS cannot predict how much, if any, revenue will be collected from reviewing C-PACE ordinances or applications.

The bill would also have an indeterminate impact on local government units; however, the bill is permissive and does not require any municipality to participate in the C-PACE program. The OLS also notes that any public entity that finances a C-PACE project would also receive annual revenues increases associated with the collection of C-PACE assessment payments.

Under the bill, the EDA would be required to adopt rules and regulations to establish the C-PACE program and submit a report within five years concerning the status of the program. The bill also permits the EDA to contract with one or more third-party administrators to assist the authority in its implementation or administration, or a combination thereof, of the C-PACE program pursuant to a competitive bidding process, except that the EDA is prohibited from delegating its responsibility for general oversight of the C-PACE program. As a result, the bill will impose additional administrative responsibilities on the EDA, which may be fulfilled through its existing staff. Additionally, the bill may also increase the administrative costs of any public entity that contracts with the EDA to assume certain responsibilities under the program.

Loans issued to support C-PACE projects would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project (e.g., EDA or municipality) is expected to receive increased annual revenues (i.e., C-PACE assessment collections), for not more than 30 years, to offset the costs of financing the project. Specifically, the amount of a C-PACE assessment for a property would be a specific amount, and the terms of repayment of direct financing would be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment.

The bill may also have an indeterminate impact on municipalities, counties, and county improvement authorities. The bill establishes the process for a municipality to establish and implement a C-PACE program, include setting forth requirements to be included in a municipal ordinance. In addition, if a municipality establishes a C-PACE program, it may incur additional administrative costs in imposing and collecting the assessment, which is imposed and collected with municipal property taxes. However, the OLS notes that this bill is permissive and does not require a municipality to participate in the C-PACE program to be established by the EDA.

Although the bill provides for a self-liquidating financing mechanism under which C-PACE program costs are borne only by property owners who benefit from the improvements, the lender of a C-PACE loan or the locality issuing bonds may be required to expend general revenues for the repayment of debt in the event that a property owner fails to make required payments of the special assessment. In most cases, however, the public entity would be able to recover those costs through enforcement of its lien against the property owner under general law.

Section:	*Local Government*
Analyst:	*Benjamin A. Levy* *Associate Research Analyst*
Approved:	*Frank W. Haines III* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2374

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 3, 2020

SUMMARY

Synopsis: Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use of voluntary special assessments by municipalities for certain property owners.

Type of Impact: Indeterminate annual increase in State expenditures; indeterminate potential impact on local finances.

Agencies Affected: New Jersey Economic Development Authority, local government units, and other public entities.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost		Indeterminate Annual Increase	
Local Finances		Indeterminate Potential Impact	

- The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

- Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

- To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a municipality a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA and a participating municipality may also charge the property owner a one-time fee, not to exceed $75,000 or one percent of the amount financed, to review a C-PACE project application.

- The bill also permits a participating municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the participating municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

- C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

- The OLS notes that the bill is permissive with respect to a municipality's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

BILL DESCRIPTION

This bill would require the EDA to establish the Garden State C-PACE program to finance the implementation of Property Assessed Clean Energy (PACE), including projects for commercial properties (C-PACE), by property owners that request to participate in the program. C-PACE projects could include an energy efficiency improvement or renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood and hurricane resistant construction improvement, C-PACE assessment on the heating and cooling system, or a power purchase agreement for a renewable energy system. Under the program, participating property owners would receive loan financing, the costs of which would be repaid through a C-PACE assessment, established by municipal ordinance, imposed on the property. The C-PACE assessment would be collected by the municipality in which the property is located and directed to the lender of the C-PACE loan.

Within 180 days of the effective date of the bill, the EDA is required to establish the C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) C-PACE program guidelines; and (4) the process by which a municipality applies to the authority for approval of a local C-PACE program ordinance. Additionally, the bill permits a participating municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the participating municipality in its implementation and administration, or a combination thereof, of the local C-PACE program. The municipality may delegate to one or more private parties or a county improvement authority such matters as the participating municipality determines. The bill also provides that the EDA may contract with one or more third-party administrators to assist the C-PACE program. However, the EDA may not delegate its responsibility for general oversight of the C-PACE program.

The bill authorizes the EDA to charge a municipality a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA and a participating municipality may also charge the property owner a one-time fee, not to exceed $75,000 or one percent of the amount financed, to review a C-PACE project application. The fee imposed by a municipality must be inclusive of any fee to compensate a third-party administrator.

The bill also sets forth a process for municipalities to establish and implement the C-PACE program. Specifically, the bill authorizes the governing body of a municipality to submit an application to the authority for approval, and the application must contain: (1) a proposed local C-PACE program ordinance consistent with subsection b. of section 5 of the bill; and (2)

acknowledgement that the municipality shall use the uniform assessment documents prepared by the authority.

The municipal ordinance may establish standards for the maximum duration of a C-PACE assessment, but in no event would the maximum duration exceed the weighted average useful life of the improvements in the C-PACE project or 30 years, whichever is less. The specific amount, and the terms of repayment of direct financing shall be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment. A C-PACE assessment would be a single, continuous first lien on the property against which the assessment agreement is recorded, on and after the date of recordation of the agreement. In addition, a C-PACE assessment would be treated as a municipal lien rather than a contractual lien for all purposes of the law.

The bill also requires the EDA, 18 months after the date of enactment, and no later than five years thereafter, to submit a report to the Governor and the Legislature reviewing and assessing the implementation of the C-PACE program and any local C-PACE programs. This report would also evaluate the C-PACE program, and review foreclosure rates, and any other factors the EDA deems appropriate, and also identify and recommend any legislative changes to the law authorizing the C-PACE program that may be necessary.

Under current law, the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a clean energy special assessment to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date of enactment of this bill into law.

The bill also authorizes municipalities and county improvement authorities to issue bonds based upon the terms set forth in the ordinance. The bill designs the C-PACE assessment program to be self-liquidating by which C-PACE program costs are borne only by property owners who benefit from the improvements. Revenues generated through the C-PACE assessment on the improved property would pay the lender of a C-PACE loan or the locality issuing bonds to finance the C-PACE program.

Lastly, the bill also clarifies that actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of certain sections of the bill would be unaffected by the bill's enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates the bill may result in an indeterminate increase in annual State expenditures by requiring the EDA to establish and oversee the Garden State C-PACE program. To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a municipality a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA

and a participating municipality may also charge the property owner a one-time fee, not to exceed $75,000 or one percent of the amount financed, to review a C-PACE project application. The fee imposed by a municipality must be inclusive of any fee to compensate a third-party administrator. Without knowing the degree of participation in the C-PACE program, the OLS cannot predict how much, if any, revenue will be collected from reviewing C-PACE ordinances or applications.

The bill would also have an indeterminate impact on local government units; however, the bill is permissive and does not require any municipality to participate in the C-PACE program. The OLS also notes that any public entity that finances a C-PACE project would also receive annual revenues increases associated with the collection of C-PACE assessment payments.

Under the bill, the EDA would be required to adopt rules and regulations to establish the C-PACE program and submit a report within five years concerning the status of the program. The bill also permits the EDA to contract with one or more third-party administrators to assist the authority in its implementation or administration, or a combination thereof, of the C-PACE program pursuant to a competitive bidding process, except that the EDA is prohibited from delegating its responsibility for general oversight of the C-PACE program. As a result, the bill will impose additional administrative responsibilities on the EDA, which may be fulfilled through its existing staff. Additionally, the bill may also increase the administrative costs of any public entity that contracts with the EDA to assume certain responsibilities under the program.

Loans issued to support C-PACE projects would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project (e.g., EDA or municipality) is expected to receive increased annual revenues (i.e., C-PACE assessment collections), for not more than 30 years, to offset the costs of financing the project. Specifically, the amount of a C-PACE assessment for a property would be a specific amount, and the terms of repayment of direct financing would be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment.

The bill may also have an indeterminate impact on municipalities, counties, and county improvement authorities. The bill establishes the process for a municipality to establish and implement a C-PACE program, include setting forth requirements to be included in a municipal ordinance. In addition, if a municipality establishes a C-PACE program, it may incur additional administrative costs in imposing and collecting the assessment, which is imposed and collected with municipal property taxes. However, the OLS notes that this bill is permissive and does not require a municipality to participate in the C-PACE program to be established by the EDA.

Although the bill provides for a self-liquidating financing mechanism under which C-PACE program costs are borne only by property owners who benefit from the improvements, the lender of a C-PACE loan or the locality issuing bonds may be required to expend general revenues for the repayment of debt in the event that a property owner fails to make required payments of the special assessment. In most cases, however, the public entity would be able to recover those costs through enforcement of its lien against the property owner under general law.

Section:	*Local Government*
Analyst:	*Benjamin A. Levy* *Associate Research Analyst*
Approved:	*Frank W. Haines III* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2374

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 24, 2021

SUMMARY

Synopsis: Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use of voluntary special assessments by municipalities for certain property owners.

Type of Impact: Indeterminate annual increase in State expenditures; indeterminate potential impact on local finances.

Agencies Affected: New Jersey Economic Development Authority, local government units, and other public entities.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost		Indeterminate Annual Increase	
Local Finances		Indeterminate Potential Impact	

- The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

- Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

- To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a county or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for

a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

- The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

- C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

- The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

BILL DESCRIPTION

This bill would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property.

As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to

be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue

bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187, the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance PACE projects, including commercial properties (C-PACE), undertaken by participating property owners.

Under the bill, the EDA would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a county or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The

EDA may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances. The OLS also notes that any public entity that finances a C-PACE project would also receive annual revenues increases associated with the collection of C-PACE assessment payments.

Under the bill, the EDA would be required to adopt rules and regulations to establish the C-PACE program and submit a report within five years concerning the status of the program. The bill also permits the EDA to contract with one or more third-party administrators to assist the authority in its implementation or administration, or a combination thereof, of the C-PACE program pursuant to a competitive bidding process, except that the EDA is prohibited from delegating its responsibility for general oversight of the C-PACE program. As a result, the bill will impose additional administrative responsibilities on the EDA, which may be fulfilled through its existing staff. Additionally, the bill may also increase the administrative costs of any public entity that contracts with the EDA to assume certain responsibilities under the program.

Loans issued to support C-PACE projects would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project (e.g., EDA or municipality) is expected to receive increased annual revenues (i.e., C-PACE assessment collections), for not more than 30 years, to offset the costs of financing the project. Specifically, the amount of a C-PACE assessment for a property would be a specific amount, and the terms of repayment of direct financing would be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment.

The bill may also have an indeterminate impact on municipalities, counties, and county improvement authorities. The bill establishes the process for a municipality to establish and implement a C-PACE program, include setting forth requirements to be included in a municipal ordinance. In addition, if a municipality establishes a C-PACE program, it may incur additional administrative costs in imposing and collecting the assessment, which is imposed and collected with municipal property taxes. However, the OLS reiterates that this bill is permissive and

therefore does not require a municipality or county to participate in the C-PACE program to be established by the EDA.

Although the bill provides for a self-liquidating financing mechanism under which C-PACE program costs are borne only by property owners benefitting from the improvements – the lender of a C-PACE loan or the locality issuing bonds may be required to expend general revenues for the repayment of debt in the event that a property owner fails to make required payments of the special assessment. In most cases, however, the public entity would recover those costs through enforcement of its lien against the property owner under general law.

Section:	*Local Government*
Analyst:	*Benjamin A. Levy* *Assistant Fiscal Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2374

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 29, 2021

SUMMARY

Synopsis: Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use of voluntary special assessments by municipalities for certain property owners.

Type of Impact: Indeterminate annual increase in State expenditures; indeterminate potential impact on local finances.

Agencies Affected: New Jersey Economic Development Authority, local government units, and other public entities.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost		Indeterminate Annual Increase	
Local Finances		Indeterminate Potential Impact	

- The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

- Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

- To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a country or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for

a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

- The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

- C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance local C-PACE and Garden State C-PACE programs.

- The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

BILL DESCRIPTION

This bill would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property.

As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-

PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187, the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for local and Garden State C-PACE programs pursuant to the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance PACE projects, including commercial properties (C-PACE), undertaken by participating property owners.

Under the bill, the EDA would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a country or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting,

and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances. The OLS also notes that any public entity that finances a C-PACE project would also receive annual revenues increases associated with the collection of C-PACE assessment payments.

Under the bill, the EDA would be required to adopt rules and regulations to establish the C-PACE program and submit a report within five years concerning the status of the program. The bill also permits the EDA to contract with one or more third-party administrators to assist the authority in its implementation or administration, or a combination thereof, of the C-PACE program pursuant to a competitive bidding process, except that the EDA is prohibited from delegating its responsibility for general oversight of the C-PACE program. As a result, the bill will impose additional administrative responsibilities on the EDA, which may be fulfilled through its existing staff. Additionally, the bill may also increase the administrative costs of any public entity that contracts with the EDA to assume certain responsibilities under the program.

Loans issued to support C-PACE projects would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project (e.g., EDA or municipality) is expected to receive increased annual revenues (i.e., C-PACE assessment collections), for not more than 30 years, to offset the costs of financing the project. Specifically, the amount of a C-PACE assessment for a property would be a specific amount, and the terms of repayment of direct financing would be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment.

The bill may also have an indeterminate impact on municipalities, counties, and county improvement authorities. The bill establishes the process for a municipality to establish and implement a C-PACE program, include setting forth requirements to be included in a municipal ordinance. In addition, if a municipality establishes a C-PACE program, it may incur additional administrative costs in imposing and collecting the assessment, which is imposed and collected with municipal property taxes. However, the OLS reiterates that this bill is permissive and therefore does not require a municipality or county to participate in the C-PACE program to be established by the EDA.

Although the bill provides for a self-liquidating financing mechanism under which C-PACE program costs are borne only by property owners benefitting from the improvements – the lender of a C-PACE loan or the locality issuing bonds may be required to expend general revenues for the repayment of debt in the event that a property owner fails to make required payments of the special assessment. In most cases, however, the public entity would recover those costs through enforcement of its lien against the property owner under general law.

Section:	*Local Government*
Analyst:	*Benjamin A. Levy* *Assistant Fiscal Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1953

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)
Senator CHRISTOPHER "KIP" BATEMAN
District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use by municipalities of voluntary special assessments for certain property owners.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the implementation of renewable energy and energy efficiency systems and water conservation, flood and hurricane resistance projects, energy storage, and microgrids, supplementing Titles 34 and 40 of the Revised Statutes, and amending P.L.2011, c.187 and P.L.1960, c.183.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) The Legislature finds and declares it to be the public policy of this State that:

a. Investing in water conservation, stormwater management, renewable energy, and energy efficiency improvements to real property is beneficial over time, and flood and hurricane mitigation projects for existing properties is a critical component in conserving natural resources and mitigating the effects of floods and hurricanes, and upfront costs are a barrier to investing in such major energy, water, and resiliency improvements;

b. There are few financing options for such improvements that combine easy qualification, an attractive interest rate, and a relatively long repayment term;

c. Property accessed clean energy, or "PACE," lending, in which repayment is by way of a special assessment on the real property to which the improvement was made, provides an innovative way for property owners to finance renewable energy, energy and water efficiency, and other eligible improvements which, in turn, results in property owners saving a significant sum in energy costs, helps communities create local jobs, results in lower mortgage foreclosures, and stimulates local economies and lower emissions;

d. PACE financing will enable New Jersey municipalities to contribute toward meeting community sustainability, greenhouse gas emissions reductions, and energy goals, and will provide a valuable service to the citizens of their communities; and

e. PACE financing, and the powers conferred and expenditures made pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), serve a valid public purpose and enactment of P.L. , c. (C.) (pending before the Legislature as this bill) is expressly declared to be in the public interest.

2. (New section) As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Authority" means the New Jersey Economic Development Authority, and for purposes of P.L. , c. (C.) (pending before the Legislature as this bill) shall also include other related State

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

agencies and or third-party administrators as may be engaged by the authority for the purposes of providing the services authorized by the rules and regulations adopted pursuant to P.L. , c. (C.) (pending before the Legislature as this bill).

"Energy efficiency improvement" means an improvement to reduce energy consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy, including, but not limited to: air sealing; installation of insulation; installation of energy-efficient electrical, heating, cooling or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

"Flood resistant construction project" means a project that mitigates the likelihood of substantial flood damage, including but not limited to the installation of break-away walls and building elevation alterations.

"Hurricane resistant construction project" means an improvement that brings a component of a structure into compliance with the standards for a "wind-borne debris region" adopted pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or into compliance with a successor standard under that code.

"Microgrid" means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid and that connects and disconnects from the grid to enable it to operate when both connected to, or independent of, the grid.

"NJPACE program" means the program established by the authority pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) in which a municipality may elect to participate.

"PACE" is an acronym for the term "property assessed clean energy."

"PACE project" means any category of improvement that the authority identifies pursuant to rules or regulations, including but not limited to an energy efficiency improvement, renewable energy system, energy storage, microgrid, water conservation project, stormwater management system, zero emission vehicle charging infrastructure, flood resistant construction project, and hurricane resistant construction project which is undertaken by the owner of real property located within a participating municipality and permanently affixed to such property.

"PACE special assessment" means a local improvement assessment, in accordance with chapter 56 of Title 40 of the Revised Statutes, imposed by a participating municipality on a property, with the consent of the owner of such property, as a

means of securing a loan made by a lender to finance a PACE project at such property, payments in respect of which assessment are collected by the participating municipality and remitted to the lender.

"Participating municipality" means a municipality that has adopted an ordinance in the form prescribed by the authority authorizing its participation in the NJPACE program, as well as taken such other actions as the authority may establish in rules and regulations adopted pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), including designating the authority to manage, oversee, and administer its participation in the program implementation or any combination thereof.

"Private entity" means a private for-profit or non-profit corporation, partnership, or any other form of private organization, including but not limited to a "related competitive business segment of a public utility holding company," or a "related competitive business segment of an electric public utility or gas public utility," as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), so long as the organization is not subject to the jurisdiction of the Board of Public Utilities.

"Project costs" mean the costs associated with a PACE project, and shall include: the hard costs of purchasing, constructing or acquiring the project; soft costs, including but not limited to engineering fees, inspection fees and permits, and costs relating to the measurement and verification of project savings; and costs of utilizing the NJPACE program, including but not limited to program fees, closing costs, and interest and other financing charges.

"Property" means an industrial, agricultural, or commercial property, or a residential property with five or more dwelling units, within a municipality upon which a PACE special assessment is imposed at the request of a property owner in connection with a PACE project.

"Property owner" means the owner of a property within a municipality who requests that a PACE special assessment be imposed on the property in connection with a PACE project.

"Renewable energy system" means an improvement in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bio-mass, or wind energy, together with such other fuels and energy sources that the authority, after consultation with the Board of Public Utilities, may determine pursuant to rules and regulations adopted pursuant to P.L. , c. (C.) (pending before the Legislature as this bill).

"Solar renewable energy certificate" means the same as defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Stormwater management system" means the same as defined in section 3 of P.L.2019, c.42 (C.40A:26B-3).

"Water conservation project" means an improvement that reduces water consumption, increases the efficiency of water use, or reduces water loss.

3. (New section) a. The authority shall establish a NJPACE program to facilitate the financing of PACE projects that fulfills the requirements enumerated herein, as well as those rules, regulations, guidelines, and other requirements established by the authority as part of the administration of the program. The NJPACE program shall consist of, among other things, the implementation of PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a PACE special assessment to be imposed on properties within the municipality, if the owner of a property requests the PACE special assessment in order to undertake and finance a PACE project. PACE projects on an individual property subject to the same PACE special assessment agreement collectively shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby.

b. The authority may enter into a memorandum of agreement with one or more State government agencies or instrumentalities whereby any of the powers the authority may exercise or responsibilities it must fulfill pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) may be exercised or fulfilled, as the case may be, by such agency or instrumentality, and any fund that may be used for administrative expenses by the authority may be used by such agency or instrumentality in exercising such powers or fulfilling such responsibilities.

c. The authority may also hire and set the compensation of one or more private parties, whether for-profit or not-for-profit, to assist the authority in its administration of the program pursuant to a competitive bidding process in accordance with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill). The authority may delegate to such one or more private parties such matters as may be determined by rules and regulations adopted by the authority, provided that under no circumstances may the authority delegate its responsibility for general oversight of the NJPACE program.

d. The authority may establish a loan loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by lenders providing PACE loans, in order to improve the availability and financial terms of such financing for PACE projects for property owners.

e. The authority may purchase PACE loans from lenders and hold them until maturity, or resell them to other private parties, either individually or aggregated in securitized form.

f. Pursuant to the purpose and objectives outlined in P.L. , c. (C.) (pending before the Legislature as this bill), and with

respect to the responsibilities of administering the NJPACE program, the authority shall issue rules and regulations and guidelines further establishing the terms and conditions under which financing may be provided under the program, in consultation with the Board of Public Utilities and the Division of Local Government Services in the Department of Community Affairs.

g. The authority shall determine compliance with the underwriting criteria and other requirements set forth in P.L. , c. (C.) (pending before the Legislature as this bill), and the rules, regulations, and guidelines adopted pursuant thereto, and shall include an accounting of the NJPACE Program in the annual report required each year pursuant to subsection a. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill).

4. (New section) a. Eighteen months after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), and annually thereafter, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report describing the implementation and operation of the NJPACE program, including program receipts, disbursements, and earnings. The annual report may also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

b. No later than five years after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), th e authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report that reviews and assesses implementation of the NJPACE program. The report shall evaluate the NJPACE program, and review foreclosure rates, cost-effectiveness of PACE projects, reasonableness of costs to property owners, and any other factors the authority deems appropriate. The report shall also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

c. The authority shall post all reports prepared pursuant to this subsection on its Internet website.

5. (New section) a. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the authority may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority determines to be necessary to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), which rules and regulations shall be effective for a period not exceeding 360 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). Such rules and regulations shall, thereafter, be amended, adopted,

or readopted by the authority in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The rules and regulations shall include, but not be limited to:

(1) the necessary application requirements and procedures for a property owner seeking PACE financing and a lender seeking to make PACE loans;

(2) the necessary qualifications and requirements for a proposed PACE project, including the qualifications and requirements for projects other than energy efficiency improvements and renewable energy systems, which may include, without limitation, resiliency-related projects, water efficiency improvements, and energy storage, microgrid, and combined heat and power projects;

(3) the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the NJPACE program;

(4) a requirement that all existing lien holders on a property be given notice prior to a PACE special assessment and lien being filed in connection with that property, and that all property owners seeking a PACE loan receive consent of the existing mortgage holders on the property prior to the authority's approval of the PACE loan;

(5) a requirement that term of the PACE loan be no longer than the forecast life of the improvements; and

(6) forms of agreement and other documents necessary for the efficient administration of the NJPACE program.

b. Prior to adoption of the rules and regulations pursuant to subsection a. of this section, the authority shall organize and hold a public stakeholder meeting regarding the rules and regulations, after providing, by publication of a notice not less than 20 days prior to such meeting including the time, date, and place thereof.

c. The NJPACE program shall not be operational and available for the participation of municipalities and property owners until rules and regulations, and program guidelines have initially been adopted by the authority pursuant to subsection a. of this section.

6. (New section) a. Notwithstanding any provision of chapter 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.), or any other law to the contrary, a municipality shall follow the following process to establish and implement a NJPACE program pursuant to P.L. , c. (C.) (pending before the Legislature as this bill):

(1) A municipal ordinance shall establish a form of PACE special assessment agreement to be entered into with NJPACE program participants, and identify whether the NJPACE program will be implemented, financed, and managed by the municipality, the county, or by a county improvement authority, or by another public entity or private entity.

(2) The municipal ordinance required by the authority to be adopted by a municipality shall prescribe criteria for participation in the NJPACE program at the time of the initial financing, which criteria shall include, at a minimum, the following:

(a) that PACE financing recipients are either the legal owners of the underlying property or provide the written consent of the legal owners of the underlying property, are current on mortgage and property tax payments with respect to the underlying property, and are not the subject of a default or in bankruptcy proceedings;

(b) an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project; and

(c) require that an appraisal be conducted, if one is not conducted by the lender for the PACE project.

The ordinance may establish standards for the maximum amount, or duration of PACE special assessments, or both, but in no event shall the maximum duration of a PACE special assessment exceed 30 years.

(3) The municipal ordinance shall require that a disclosure form summarizing PACE financing risks provided by the NJPACE program administrator and the lender be signed by the owner of each property. The disclosure form shall include, but need not be limited to, the following information:

(a) risks from incorrect or defective improvement design or construction of the PACE project;

(b) risk of foreclosure for failure to pay the special assessment;

(c) imposition of charges or other enforcement for delinquent PACE special assessment payments in the same manner as delinquent real estate taxes;

(d) lack of guarantee of energy savings from the PACE project;

(e) likelihood that completed PACE projects may require ongoing maintenance to meet performance targets;

(f) probability that changes in property occupancy or energy costs may affect energy savings expected from the project;

(g) lack of guarantee by the NJPACE program or NJPACE program administrator of availability of local, State, or federal tax credits or other incentives; and

(h) amount of additional fees for actual municipal costs that will be added to the PACE special assessment.

(4) The municipal ordinance shall also require that the NJPACE program include the following consumer protection provisions:

(a) the authority of the property owner to cancel the PACE contract within three business days of signing it;

(b) a requirement to provide information to the property owner on the total cost of the PACE project for the life of the agreement including interest or fees to be paid, total number of payments,

payment frequency, amount of each payment, and warranty or maintenance obligations; and

(c) a prohibition restricting specific monetary or percentage estimates on property value changes as a result of the PACE project.

b. The amount of a PACE special assessment shall be a specific amount, not to exceed the project costs of the PACE project. The specific amount of a PACE special assessment, which shall be consented to by the property owner by its execution of a PACE special assessment agreement in the form promulgated by the authority, shall be deemed the benefit conferred with respect to the property and shall be in lieu of the amount being determined by any other procedures set forth in Title 40 of the Revised Statutes otherwise applicable to determining the actual benefit conferred on the property. No other confirmation or determination of the amount of the PACE special assessment, including, but not limited to the procedure set forth at R.S.40:56-30, shall be required.

c. Subject to the written consent of existing mortgage holders, the form of which shall be determined by the authority in its rules regulations, or guidelines, a PACE special assessment shall be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded, on and after the date of recordation of the agreement. Upon recordation of the PACE special assessment agreement in the land records of the county in which the property is located, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, without any additional notice, recording, filing, continuation filing, or action, until payment in full of the PACE special assessment, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any other proceeding which does not impair the substantial rights of the owner or owners or other person or persons having a lien upon or interest in any such real estate. Any confirmation of the amount of the assessment by the governing body or by the court shall be considered as determining the amount of the existing lien and not as establishing the lien. All assessments shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

A PACE special assessment shall not be considered an "equivalent consensual security interest" for the purposes of the "New Jersey Residential Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-51 et seq.). A PACE special assessment shall be treated

as a municipal lien rather than a contractual lien for all purposes of law.

d. Funds to implement a PACE project may be disbursed to the property owner at execution of the PACE special assessment agreement, or may be disbursed in installments over time. Such funds shall not constitute public funds, and shall not be subject to the laws governing public funds, including but not limited to laws regarding the receipt, expenditure, deposit, investment, or appropriation of the same. A PACE project shall not be considered a "facility" or "public facility" within the meaning of the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.). Payments of PACE special assessments shall commence as set forth in the PACE special assessment agreement. To the extent that upon completion of the PACE project, funds remain which have not been disbursed to the property owner for a PACE project, those funds on hand shall be used to reduce the amount of the PACE special assessment.

e. Except as provided in subsection g. of this section, if any payment of a PACE special assessment is not made within 10 days after the time when that payment shall have become due, or later, consistent with any grace period provided or extended by a municipality for the payment of property tax bills, interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the municipality, and collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the municipality shall enforce collection of its unpaid property taxes through accelerated tax sale. However, the balance due on a PACE special assessment shall not be subject to acceleration in the event of a default in payment. Notwithstanding any other provision of law, in the event that any lien on the property shall be exposed to tax sale, pursuant to the "tax sale law," R.S.54:5-1 et seq., and any such lien is struck off and sold to the municipality, the PACE special assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, and provided that, notwithstanding the obligations of a municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5-53.1), while the municipality holds such lien or owns such property, the municipality shall not be responsible for or required to make any payment in furtherance of or to satisfy any such PACE special assessment.

f. PACE special assessments may be assigned directly by the municipality, and any assignee thereof, as security for the repayment of any obligations of a property owner to a lender that has provided a PACE loan, to such lender, or any assignee thereof.

Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the municipality's right, title, and interest in and to the PACE special assessment, along with the rights and remedies provided to the municipality under the PACE special assessment agreement, including, but not limited to, the right to direct the collection of payments due. PACE special assessments assigned as provided hereunder shall not be included in the general funds of the municipality, or be subject to any laws regarding the receipt, deposit, investment, or appropriation of public funds, and shall retain such status notwithstanding enforcement of the assessment by the municipality or assignee as provided herein. In the case of a municipality which is otherwise subject to tax or revenue sharing pursuant to law and which assigns PACE special assessments as set forth in this section, such PACE special assessments shall not be considered part of the tax or revenue sharing formula or calculation of municipal revenues for the purpose of determining whether that municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool.

g. Notwithstanding any other law to the contrary, in any foreclosure action due to nonpayment or late payment of a PACE special assessment for property in the NJPACE program, service of the complaint on all parties shall be made by personal service, hand-delivered by the sheriff or personal process server, and the procedure for obtaining a final judgment shall conform to the procedures and requirements of the in personam foreclosure process.

7. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to read as follows:

1. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement and may provide by ordinance for a "clean energy special assessment" to be imposed on a property within the municipality, if the owner of the property requests the assessment in order to install such systems or improvements. Each improvement on an individual property shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby. The clean energy special assessment shall be payable in quarterly installments. The terms of the clean energy special assessment shall be in accordance with the terms of the financing provided by the municipality pursuant to section 2 of P.L.2011, c.187 (C.40:56-13.1).

b. Notwithstanding the provisions of subsection a. of this section to the contrary, the Director of Local Government Services

in the Department of Community Affairs shall not approve an application and a municipality shall not undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.187, s.1)

8. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to read as follows:

2. a. (1) Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, a municipality may adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners. The governing body may apply to a county improvement authority that issues bonds pursuant to paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2). Funds for the purchase and installation of renewable energy systems and energy efficiency improvements shall be loaned to property owners in exchange for a clean energy special assessment on the property pursuant to section 1 of P.L.2011, c.187 (C.40:56-1.4), to be paid quarterly. In the case of financing provided by bonds issued by a county improvement authority, the clean energy special assessment shall be used to repay the bonds. In the case of financing provided by the municipality through the issuance of municipal bonds, the clean energy special assessment shall be used to repay the bonds. A property owner who purchases and installs a renewable energy system under the program may also assign any solar renewable energy certificates or other renewable energy credits that accrue to the property owner from the operation of the system to the municipality or the county improvement authority to repay the loan for the system. The Director of Local Government Services in the Department of Community Affairs shall coordinate efforts with the Board of Public Utilities to ensure that the amount of financing made available by local programs authorized pursuant to this act is in accordance with limits set from time to time by the Board of Public Utilities in order to ensure that local programs further the goals of the Office of Clean Energy in the Board of Public Utilities.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not approve an application and a municipality shall not adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by

property owners pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

b. As used in this section, "solar renewable energy certificate" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

(cf: P.L.2011, c.187, s.2)

9. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to read as follows:

3. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may establish the amounts of money to be expended by the municipality for the improvements authorized in sections 1 and 2 of P.L.2011, c.187 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may be raised by the issuance of clean energy special assessment bonds by the municipality. In making the appropriation, the governing body may designate the particular projects to be financed to which the moneys shall be applied.

b. Clean energy special assessments and bonds issued to finance them shall be issued and shall be generally subject to R.S.40:56-21 et seq., as the director shall determine to be applicable.

c. The director is authorized and empowered to take such action as deemed necessary and consistent with the intent of this act to implement its provisions.

d. Notwithstanding the provisions of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not approve an application pursuant to subsection a. of this section after the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.187, s.3)

10. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities,

commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50 **[**%**]** percent of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in **[**this act**]** the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling

units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of **[**this act**]** the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A county improvement authority shall also have as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units. A county improvement authority shall also have as its purpose the implementation, management, oversight, and administration of a NJPACE program, as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2002, c.42, s.8)

11. This act shall take effect immediately, except that the NJPACE program shall be inoperable until the adoption of the rules and regulations required pursuant to subsection a. of section 5 of this act.

STATEMENT

This bill would require the Economic Development Authority (EDA) to establish a "NJPACE program."

"PACE" is an acronym for the term "property assessed clean energy." As defined in the bill, "PACE project" means any category of improvement that the EDA identifies pursuant to rules or regulations, including but not limited to an energy efficiency improvement, renewable energy system, energy storage, microgrid, water conservation project, stormwater management system, zero emission vehicle charging infrastructure, flood resistant

construction project, and hurricane resistant construction project which is undertaken by the owner of real property located within a participating municipality and permanently affixed to such property.

The NJPACE program, to be established by the EDA pursuant to this bill, would consist of, among other things, the implementation of PACE projects to be undertaken by property owners as local improvements and the provision by municipal ordinance for a PACE special assessment to be imposed on properties within the municipality, if the owner of a property requests the PACE special assessment in order to undertake and finance a PACE project. The special assessment would be used to repay the loan for the PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. PACE projects on an individual property subject to the same PACE special assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

The bill provides that the EDA may enter into a memorandum of agreement with one or more State government agencies or instrumentalities authorizing the agency or instrumentality to exercise the EDA's powers or responsibilities under the bill. The bill also provides that the EDA may hire and set the compensation for one or more private parties, whether for-profit or not-for-profit, to assist in the administration of the NJPACE program pursuant to a competitive bidding process. However, the EDA could not delegate its responsibility for general oversight of the NJPACE program.

The bill provides that the EDA may establish a loan loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by lenders providing PACE loans, in order to improve the availability and financial terms of financing for PACE projects for property owners. In addition, the EDA may purchase PACE loans from lenders and hold them until maturity, or resell them to other private parties, either individually or aggregated in securitized form.

The bill requires the EDA to adopt rules and regulations and guidelines further establishing the terms and conditions under which financing may be provided under the program, in consultation with the Board of Public Utilities and the Division of Local Government Services in the Department of Community Affairs.

The bill requires the EDA to adopt rules and regulations to implement the NJPACE program, which would include, but not be limited to:

(1) the application requirements and procedures for a property owner seeking PACE financing and a lender seeking to make PACE loans;

(2) the qualifications and requirements for a proposed PACE project, including the qualifications and requirements for projects

other than energy efficiency improvements and renewable energy systems, which may include, without limitation, resiliency-related projects, water efficiency improvements, and energy storage, microgrid, and combined heat and power projects;

(3) the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the NJPACE program;

(4) a requirement that all existing lien holders on a property be given notice prior to a PACE special assessment and lien being filed in connection with that property, and that all property owners seeking a PACE loan receive consent of the existing mortgage holders on the property prior to the EDA's approval of the PACE loan;

(5) a requirement that term of the PACE loan be no longer than the forecast life of the improvements; and

(6) forms of agreement and other documents necessary for the efficient administration of the NJPACE program.

The bill would require the EDA, 18 months after the date the bill is enacted into law, and annually thereafter, to prepare and submit a report to the Governor and the Legislature describing the implementation and operation of the NJPACE program, including program receipts, disbursements, and earnings. In addition, the bill requires the EDA, no later than five years after the date the bill is enacted into law, to prepare and submit a report to the Governor and the Legislature, that reviews and assesses implementation of the NJPACE program. This report would evaluate the NJPACE program, and review foreclosure rates, cost-effectiveness of PACE projects, reasonableness of costs to property owners, and any other factors the EDA deems appropriate, and also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

Further, section 6 of the bill establishes the process for a municipality to establish and implement a NJPACE program pursuant to the bill and sets forth the requirements to be included in a municipal ordinance. The municipal ordinance would, at a minimum:

(1) require that PACE financing recipients are either the legal owners of the underlying property or provide the written consent of the legal owners of the underlying property, are current on mortgage and property tax payments with respect to the underlying property, and are not the subject of a default or in bankruptcy proceedings;

(2) establish an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project;

(3) require that a disclosure form summarizing PACE financing risks provided by the NJPACE program administrator and the lender be signed by the owner of each property; and

(4) include certain specified consumer protection provisions.

The municipal ordinance may establish standards for the maximum amount, or duration of a PACE special assessment, or both, but in no event would the maximum duration of a PACE special assessment exceed 30 years. The amount of a PACE special assessment would be a specific amount, not to exceed the project costs of the PACE project.

A PACE special assessment would be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded, on and after the date of recordation of the agreement. In addition, a PACE special assessment would be treated as a municipal lien rather than a contractual lien for all purposes of law.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date of enactment of this bill into law.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation, management, oversight, and administration of a NJPACE program pursuant to the bill.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1953

STATE OF NEW JERSEY

DATED: JUNE 15, 2021

The Senate Environment and Energy Committee favorably reports a committee substitute for Senate Bill No. 1953.

This Senate committee substitute would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would

constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee

for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

This Senate committee substitute, as reported by the committee, is identical to Assembly Bill No. 2374 (ACS/1R), as also reported and amended by the committee.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1953

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2021

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill No. 1953, with committee amendments.

This bill, as amended by the committee, would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien

on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the

EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

As amended, this bill is identical to Assembly Bill No. 2374 ACS (3R), which was also reported favorably, with amendments, by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments to the bill would:

(1) clarify that a county improvement authority would be authorized by the bill to issue bonds to finance a C-PACE project under the Garden State C-PACE program (as well as local C-PACE programs); and

(2) make other clarifying changes to the bill's language.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a county or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any

public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1953

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 29, 2021

SUMMARY

Synopsis: Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use of voluntary special assessments by municipalities for certain property owners.

Type of Impact: Indeterminate annual increase in State expenditures; indeterminate potential impact on local finances.

Agencies Affected: New Jersey Economic Development Authority, local government units, and other public entities.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost		Indeterminate Annual Increase	
Local Finances		Indeterminate Potential Impact	

- The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

- Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

- To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a country or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for

a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

- The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

- C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance local C-PACE and Garden State C-PACE programs.

- The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.

BILL DESCRIPTION

This bill would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

"C-PACE" is the acronym for the term "commercial property assessed clean energy." As defined in the bill, "C-PACE project" means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property.

As used in the bill, "property" means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The

C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187, the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a "clean energy special assessment" to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the "county improvement authorities law" to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for local and Garden State C-PACE programs pursuant to the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance PACE projects, including commercial properties (C-PACE), undertaken by participating property owners.

Under the bill, the EDA would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a country or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed $5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances. The OLS also notes that any public entity that finances a C-PACE project would also receive annual revenues increases associated with the collection of C-PACE assessment payments.

Under the bill, the EDA would be required to adopt rules and regulations to establish the C-PACE program and submit a report within five years concerning the status of the program. The bill also permits the EDA to contract with one or more third-party administrators to assist the authority in its implementation or administration, or a combination thereof, of the C-PACE program pursuant to a competitive bidding process, except that the EDA is prohibited from delegating its responsibility for general oversight of the C-PACE program. As a result, the bill will impose additional administrative responsibilities on the EDA, which may be fulfilled through its existing staff. Additionally, the bill may also increase the administrative costs of any public entity that contracts with the EDA to assume certain responsibilities under the program.

Loans issued to support C-PACE projects would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project (e.g., EDA or municipality) is expected to receive increased annual revenues (i.e., C-PACE assessment collections), for not more than 30 years, to offset the costs of financing the project. Specifically, the amount of a C-PACE assessment for a property would be a specific amount, and the terms of repayment of direct financing would be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment.

The bill may also have an indeterminate impact on municipalities, counties, and county improvement authorities. The bill establishes the process for a municipality to establish and implement a C-PACE program, include setting forth requirements to be included in a municipal ordinance. In addition, if a municipality establishes a C-PACE program, it may incur additional

administrative costs in imposing and collecting the assessment, which is imposed and collected with municipal property taxes. However, the OLS reiterates that this bill is permissive and therefore does not require a municipality or county to participate in the C-PACE program to be established by the EDA.

Although the bill provides for a self-liquidating financing mechanism under which C-PACE program costs are borne only by property owners benefitting from the improvements – the lender of a C-PACE loan or the locality issuing bonds may be required to expend general revenues for the repayment of debt in the event that a property owner fails to make required payments of the special assessment. In most cases, however, the public entity would recover those costs through enforcement of its lien against the property owner under general law.

Section:	*Local Government*
Analyst:	*Benjamin A. Levy* *Assistant Fiscal Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Signs Legislation Establishing the Garden State C-PACE Program

08/24/2021

TRENTON – Governor Phil Murphy today signed legislation (A-2374) which establishes the Garden State Commercial Property Assessed Clean Energy (C-PACE) Program. The program will facilitate the funding of clean and renewable energy infrastructure at commercial properties throughout the state, furthering the Administration's commitment to battling climate change.

"C-PACE programs have been proven to be successful in many states," **said Governor Murphy.** "Establishing a C-PACE program in New Jersey is a decision that will lead to more businesses and landlords embracing renewable energy, climate resiliency technology, and other clean energy measures that improve our communities while saving money for New Jerseyans."

"The plan to create the Garden State C-CPACE program aligns with Governor Murphy's clean energy vision by helping businesses, non-profits and multi-family residential developers or property owners overcome the financial hurdles of implementing energy efficiency, renewable energy and climate resiliency measures," **said New Jersey Economic Development Authority CEO Tim Sullivan.** "The NJEDA team is excited for the opportunity to reduce the financial burden of making these critical investments by alleviating upfront costs and lowering debt service payments. This will help property owners to preserve precious capital resources for other important projects."

Primary sponsors for A-2374 are Assemblyman Raj Mukherji, and Senators Bob Smith and Kip Bateman.

"More property owners would likely be willing to make environmentally beneficial improvements to their property if they were able to access the financing to do so. The C-PACE program makes it easy for owners to make these changes by eliminating upfront costs and providing a competitive long-term financing option," **said Assemblyman Raj Mukherji.** "By offering this opportunity to property owners throughout the state, we can help residents take advantage of cost-saving measures that would also benefit the environment and resiliency of New Jersey. The program is a win-win for everyone involved."

"New Jersey needs to start upgrading its buildings to become greener and more efficient. We also need to upgrade our physical and energy infrastructure in order to withstand powerful storms like Superstorm Sandy," **said Senator Bob Smith, Chair of the Senate Environment and Energy Committee.** "Through C-PACE, municipalities will be able to provide initial financing for improving the sustainability and efficiency of buildings or properties. It is only a matter of time until we are confronted with another catastrophic storm, and when that occurs, we have to be ready."

"Countless commercial property owners across the state are ready to embrace renewable energy, but upfront costs are an obstacle," **said Senator Kip Bateman.** "The legislation signed today will help mitigate the fiscal concerns and provide owners with flexible, long-term financing alternatives. In 2011, New Jersey adopted one of the nation's most aggressive renewable energy portfolio standards, and this will make clean energy more accessible and affordable for all New Jerseyans."

A-2374 requires the New Jersey Economic Development Authority (NJEDA) to establish a Garden State Commercial Property Assessed Clean Energy ("C-PACE") Program to facilitate the financing of C-PACE projects. The bill also allows certain local governments to establish their own local C-PACE programs to facilitate the financing of C-PACE projects. A C-PACE project is defined as (1) the acquisition,

construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement; (2) a microgrid or district heating and cooling system in which a property owner participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property. The properties that are eligible for C-PACE financing are industrial, agricultural, or commercial properties; residential properties containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and properties owned by a tax-exempt or nonprofit entity, including, schools, hospitals, institutions of higher education, and religious institutions.

"C-PACE is the most popular energy efficiency program you haven't heard of and it will make a huge impact to turbo charge green financing for energy efficiency investments. We need all hands on deck to keep pace with our state energy efficiency mandates and climate goals -- the C-PACE program will help us to boost energy efficiency," **said Doug O'Malley, director of Environment New Jersey.** "We applaud Governor Murphy for signing this legislation and his work with prime sponsors Sen. Smith and Asm. Mukherji and we urge NJEDA to move forward with the rule-making process as quickly as possible."

“We applaud the Assembly’s leadership in passing C-PACE legislation and thank Governor Murphy for signing it into law. New Jerseyans need this program now more than ever,” **said Emma Horst-Martz, Advocate with NJPIRG.** “With climate change causing more intense and frequent storms, higher temperatures, and more costly utility bills, businesses and organizations can now use the C-PACE program to finance energy efficiency improvements on their buildings. Advocates have been working towards this day for a long time and we look forward to a swift rulemaking process at the Economic Development Authority so our communities can start benefiting from the program.”

"PACENation is delighted to welcome New Jersey to the C-PACE family,” **said PACENation Executive Director Colin Bishopp.** “With today's bill signing by Governor Murphy, New Jersey becomes the thirty-eighth state to embrace C-PACE as a crucial financing option for property owners. The Garden State C-PACE program administered by NJ Economic Development Authority will create local jobs, reduce carbon emissions, and facilitate thousands of building upgrades that might not have been possible otherwise. Congratulations to everyone involved."