

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 2579

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: MAY 20, 2015

SUMMARY

- Synopsis:** Authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through the use of voluntary special assessments.
- Type of Impact:** Indeterminate impact on municipal finances.
- Agencies Affected:** Division of Local Government Services (Community Affairs), municipalities, and county improvement authorities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Local Finances	Indeterminate Impact – See comments below		

- The enactment of Assembly Bill No. 2579 (2R) will have an indeterminate impact on municipal finances. The Office of Legislative Services notes that this bill is permissive and does not require any municipality to establish a Property Assessed Clean Energy (PACE) special assessment program.
- The PACE special assessment is designed to be self-liquidating because the principal and interest on the bonds issued to finance the purchase of renewable energy systems and energy efficiency improvements would be paid by revenues generated through a special assessment on the improved property.
- Although the bill relaxes certain provisions of the “Local Bond Law,” the OLS cannot predict how a municipality will exercise its discretion in structuring the financing of renewable energy systems and energy efficiency improvements.
- Municipalities may be required to temporarily expend general revenues to provide for the repayment of bonds or loans in the event that a property owner fails to make required payments of the special assessment, until the lien on the property is sold or foreclosed.

BILL DESCRIPTION

Assembly Bill No. 2579 (2R) of 2014 authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through the use of voluntary special assessments, thereby expanding the “clean energy special assessment,” established by P.L.2001, c.187 (C.40:56-1.4 et al.), and renaming it the “PACE special assessment.” (“PACE” is an acronym for Property Assessed Clean Energy.) Currently, the governing body of a municipality, upon application to, and approval by, the Director of the Division of Local Government Services (DLGS) in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy improvements made by property owners. By ordinance, the municipality may presently 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. An owner may choose to participate when the cost of PACE financing is cheaper than commercial financing. The only types of projects eligible for this treatment are installations of renewable energy systems and energy efficiency improvements.

Under the bill, water conservation projects, flood resistant construction projects, hurricane resistant construction projects, storm shelter projects, and safe room projects will also be eligible for a PACE special assessment. Most municipalities will be allowed to establish and operate PACE programs without applying for DLGS approval. Municipalities that: (1) have received Transitional Aid to Localities within the last three years; (2) are subject to State supervision under the “Local Government Supervision Act (1947),” P.L.1947, c.151 (C.52:27BB-1 et seq.), or (3) are subject to the “Municipal Rehabilitation and Economic Recovery Act,” P.L.2002, c.43 (C.52:27BBB-1 et al.), will be required to apply for DLGS approval prior to establishing a PACE program.

The bill allows a municipality, or county improvement authority or other public entity implementing a PACE program on behalf of a municipality, to designate qualified private or non-profit entities to finance the purchase and installation of eligible PACE projects. The bill allows certain exceptions to the “Local Bond Law,” for the financing of PACE programs. These exceptions concern the down payment requirement, provisions addressing periods of usefulness, bond maturity, public sale, and Local Finance Board review. The bill also clarifies that the governing body of a municipality may use private funds to finance eligible projects. Agreements between municipalities or county improvement authorities and private entities to administer PACE programs will not be subject to the public bidding requirements of the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.). These agreements may specify the terms of a fee structure between the contracting parties for services including, but not limited to, bill issuance and loan payment collection. Any fees collected shall be directly related to the costs of the associated services. As with programs administered by municipalities and county improvement authorities, private entities will be repaid through PACE special assessments. The maximum duration of a PACE special assessment is 30 years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The enactment of Assembly Bill No. 2579 (2R) will have an indeterminate impact of municipal finances. The bill authorizes municipalities to issue bonds or borrow funds from a county improvement authority or other public entity to finance loans to property owners to acquire and install renewable energy systems and energy efficiency improvements. The issuance of municipal debt must be authorized by an ordinance adopted by a two-thirds vote of the full membership of the governing body of the municipality and approved by the mayor, as is necessary in the specific form of government. The loans would be secured by the payment of a special assessment on the improved property. Special assessments would be paid quarterly and assigned to the agency that issued the bonds or provided the financing for the renewable energy improvements.

This legislation could make it easier to implement a PACE special assessment program by relaxing certain requirements of the “Local Bond Law,” (N.J.S.40A:2-1 et seq.). However, providing municipalities with greater discretion regarding how and under what terms the program is financed may increase the costs of the program and individual PACE projects. By broadening the types of projects that may be financed through PACE special assessments, the bill could increase the risk of a municipality not recovering adequate debt repayments from property owners.

While the bill provides for a financing mechanism under which costs are borne only by property owners benefitting from energy improvements, municipalities may be required to expend general revenues to provide for the repayment of bonds or loans in the event that a property owner fails to make required payments of the special assessment. The OLS notes that even when non-recourse debt is issued by a private entity to finance PACE projects, a default could exert pressure on a municipality to redeem the debt even though it is not obligated to do so. In most cases, a municipality should be able to recover its costs through enforcement of its lien against the property owner under general law.

Section: Local Government

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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.).