

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint] **ASSEMBLY, No. 2579**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 2015

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2579 (2R), with committee amendments.

As amended, this bill 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.2011, c.187 (C.40:56-1.4 et al.), and renaming it the "PACE special assessment," to utilize a concise acronym for the term "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 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. Currently, the only 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 are also eligible for a "PACE special assessment." The bill allows most municipalities to establish and operate PACE programs without applying for approval by the Director of the Division of Local Government Services. Municipalities that (1) have received Transitional Aid within 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.), are required by the bill to apply for approval from the director prior to establishing a PACE program.

Under current law, to finance eligible projects, the governing body of the municipality may issue bonds pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2), or 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). Currently, use of private financing is not explicitly prohibited.

As amended, this bill permits municipalities to issue bonds by ordinance, upon the terms set forth in the ordinance. However, the bill provides that no such funding shall be guaranteed by the full faith and credit of the municipality, or any other public entity. The bill also provides that the governing body of the municipality may use private funds to finance eligible projects.

As amended, the bill allows a municipality, a county, or a county improvement authority or other public entity, implementing a PACE program on behalf of a municipality, to designate private entities to finance the purchase and installation of eligible PACE projects. An eligible entity shall include 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 defined under 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. Similar to programs administered by municipalities and county improvement authorities, the bill provides for private entities to be repaid through PACE special assessments. Because of the specialized and qualitative nature of the services to be provided through agreements between municipalities, county improvement authorities or other public entities, and private entities to administer PACE programs, the bill specifies that these agreements will not be subject to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

The bill takes effect immediately upon enactment.

As amended and reported, this bill is identical to Senate Bill No. 1510 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

These amendments make changes to sections 2 and 4 of the bill in order to accomplish the following:

- clarify that a renewable energy project financed through a power purchase agreement is eligible for financing through a PACE special assessment;
- clarify that a project may be eligible for a PACE special assessment regardless of whether or not the project is on residential property;
- With regard to municipalities that are under MRERA, receive transitional aid, or are under State supervision, rather than requiring DCA approval for them to launch a PACE program, With regard to municipalities that are under MRERA, require

them to designate a county or county improvement authority to develop, administer and finance the program;

- make the local bond law inapplicable to the bill, but require that bonds issued under the bill are non-recourse, i.e., not backed by the full faith and credit of the municipality or any other public entity; and
- make other technical amendments to the bill.

FISCAL IMPACT:

The bill, as amended, will have an indeterminate impact on 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 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.