

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.



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

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. (New section) The Legislature finds and declares it to be the
11 public policy of this State that:

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

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

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

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

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

40
41 2. (New section) As used in P.L. , c. (C.) (pending
42 before the Legislature as this bill):

43 “Authority” means the New Jersey Economic Development
44 Authority, and for purposes of P.L. , c. (C.) (pending before
45 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 thus is new matter.

1 agencies and or third-party administrators as may be engaged by the
2 authority for the purposes of providing the services authorized by
3 the rules and regulations adopted pursuant to P.L. , c. (C.)
4 (pending before the Legislature as this bill).

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

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

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

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

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

34 “PACE” is an acronym for the term “property assessed clean
35 energy.”

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

45 “PACE special assessment” means a local improvement
46 assessment, in accordance with chapter 56 of Title 40 of the
47 Revised Statutes, imposed by a participating municipality on a
48 property, with the consent of the owner of such property, as a

1 means of securing a loan made by a lender to finance a PACE
2 project at such property, payments in respect of which assessment
3 are collected by the participating municipality and remitted to the
4 lender.

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

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

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

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

34 “Property owner” means the owner of a property within a
35 municipality who requests that a PACE special assessment be
36 imposed on the property in connection with a PACE project.

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

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

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

1 “Water conservation project” means an improvement that
2 reduces water consumption, increases the efficiency of water use, or
3 reduces water loss.

4
5 3. (New section) a. The authority shall establish a NJPACE
6 program to facilitate the financing of PACE projects that fulfills the
7 requirements enumerated herein, as well as those rules, regulations,
8 guidelines, and other requirements established by the authority as
9 part of the administration of the program. The NJPACE program
10 shall consist of, among other things, the implementation of PACE
11 projects to be undertaken by property owners as local improvements
12 and the provision by ordinance for a PACE special assessment to be
13 imposed on properties within the municipality, if the owner of a
14 property requests the PACE special assessment in order to
15 undertake and finance a PACE project. PACE projects on an
16 individual property subject to the same PACE special assessment
17 agreement collectively shall constitute a separate local improvement
18 and shall be assessed separately to the property owner benefitted
19 thereby.

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

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

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

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

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

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

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

15

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

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

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

38

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

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

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

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

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

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

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

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

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

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

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

36

37 6. (New section) a. Notwithstanding any provision of chapter
38 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.), or any
39 other law to the contrary, a municipality shall follow the following
40 process to establish and implement a NJPACE program pursuant to
41 P.L. , c. (C.) (pending before the Legislature as this bill):

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

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

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

10 (b) an appropriate ratio of the assessment to the value of the
11 property, but in no circumstance may the combination of a PACE
12 financing and the existing loan-to-value ratio on a property exceed
13 90 percent of the appraised value of the property including the
14 value of the PACE project; and

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

17 The ordinance may establish standards for the maximum amount,
18 or duration of PACE special assessments, or both, but in no event
19 shall the maximum duration of a PACE special assessment exceed
20 30 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 e. Except as provided in subsection g. of this section, if any
19 payment of a PACE special assessment is not made within 10 days
20 after the time when that payment shall have become due, or later,
21 consistent with any grace period provided or extended by a
22 municipality for the payment of property tax bills, interest thereon
23 shall be imposed at the same rate as may be imposed upon unpaid
24 property taxes in the municipality, and collected and enforced in the
25 same manner as unpaid property taxes, including by accelerated tax
26 sale if the municipality shall enforce collection of its unpaid
27 property taxes through accelerated tax sale. However, the balance
28 due on a PACE special assessment shall not be subject to
29 acceleration in the event of a default in payment. Notwithstanding
30 any other provision of law, in the event that any lien on the property
31 shall be exposed to tax sale, pursuant to the “tax sale law,”
32 R.S.54:5-1 et seq., and any such lien is struck off and sold to the
33 municipality, the PACE special assessment shall survive any
34 subsequent action to foreclose the right of redemption and continue
35 as a first lien upon the real estate described in the assessment,
36 paramount to all prior or subsequent alienations and descents of
37 such real estate or encumbrances thereon, except subsequent taxes
38 or assessments, and provided that, notwithstanding the obligations
39 of a municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5-
40 53.1), while the municipality holds such lien or owns such property,
41 the municipality shall not be responsible for or required to make
42 any payment in furtherance of or to satisfy any such PACE special
43 assessment.

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

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

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

28

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

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

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

1 in the Department of Community Affairs shall not approve an
2 application and a municipality shall not undertake the financing of
3 the purchase and installation of renewable energy systems and
4 energy efficiency improvements by property owners as a local
5 improvement pursuant to the provisions of P.L.2011, c.187
6 (C.40:56-1.4 et al.) after the date of enactment of P.L. _____, c.
7 (C. _____) (pending before the Legislature as this bill).
8 (cf: P.L.2011, c.187, s.1)

9
10 8. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to
11 read as follows:

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

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

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

4 b. As used in this section, “solar renewable energy certificate”
5 shall have the same meaning as set forth in section 3 of P.L.1999,
6 c.23 (C.48:3-51).
7 (cf: P.L.2011, c.187, s.2)

8
9 9. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to
10 read as follows:

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

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

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

28 d. Notwithstanding the provisions of this section to the
29 contrary, the Director of Local Government Services in the
30 Department of Community Affairs shall not approve an application
31 pursuant to subsection a. of this section after the date of enactment
32 of P.L. , c. (C.) (pending before the Legislature as this bill).
33 (cf: P.L.2011, c.187, s.3)

34
35 10. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to
36 read as follows:

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

1 commercial facilities, community service facilities, parking
2 facilities, hotel facilities and other facilities for the accommodation
3 and entertainment of tourists and visitors, (c) provision within the
4 county or any beneficiary county of structures, franchises,
5 equipment and facilities for operation of public transportation or for
6 terminal purposes, including development and improvement of port
7 terminal structures, facilities and equipment for public use in
8 counties in, along or through which a navigable river flows, (d)
9 provision within the county or any beneficiary county of structures
10 or other facilities used or operated by the authority or any
11 governmental unit in connection with, or relative to development
12 and improvement of, aviation for military or civilian purposes,
13 including research in connection therewith, and including structures
14 or other facilities for the accommodation of passengers, (e)
15 provision within the county or any beneficiary county of a public
16 facility for a combination of governmental and nongovernmental
17 uses; provided that not more than 50 [%] percent of the usable
18 space in any such facility shall be made available for
19 nongovernmental use under a lease or other agreement by or with
20 the authority, (f) acquisition of any real property within the county
21 or any beneficiary county, with or without the improvements
22 thereof or thereon or personal property appurtenant or incidental
23 thereto, from the United States of America or any department,
24 agency or instrumentality heretofore or hereafter created,
25 designated or established by or for it, and the clearance,
26 development or redevelopment, improvement, use or disposition of
27 the acquired lands and premises in accordance with the provisions
28 and for the purposes stated in **[this act]** the “county improvement
29 authorities law,” P.L.1960, c.183 (C.40:37A-44 et seq.), including
30 the construction, reconstruction, demolition, rehabilitation,
31 conversion, repair or alteration of improvements on or to said lands
32 and premises, and structures and facilities incidental to the
33 foregoing as may be necessary, convenient or desirable, (g)
34 acquisition, construction, maintenance and operation of garbage and
35 solid waste disposal systems for the purpose of collecting and
36 disposing of garbage, solid waste or refuse matter, whether owned
37 or operated by any person, the authority or any other governmental
38 unit, within or without the county or any beneficiary county, (h) the
39 improvement, furtherance and promotion of the tourist industries
40 and recreational attractiveness of the county or any beneficiary
41 county through the planning, acquisition, construction,
42 improvement, maintenance and operation of facilities for the
43 recreation and entertainment of the public, which facilities may
44 include, without being limited to, a center for the performing and
45 visual arts, (i) provision of loans and other financial assistance and
46 technical assistance for the construction, reconstruction, demolition,
47 rehabilitation, conversion, repair or alteration of buildings or
48 facilities designed to provide decent, safe and sanitary dwelling

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

31
32 11. This act shall take effect immediately, except that the
33 NJPACE program shall be inoperable until the adoption of the rules
34 and regulations required pursuant to subsection a. of section 5 of
35 this act.

36

37

38

STATEMENT

39

40 This bill would require the Economic Development Authority
41 (EDA) to establish a “NJPACE program.”

42 “PACE” is an acronym for the term “property assessed clean
43 energy.” As defined in the bill, “PACE project” means any
44 category of improvement that the EDA identifies pursuant to rules
45 or regulations, including but not limited to an energy efficiency
46 improvement, renewable energy system, energy storage, microgrid,
47 water conservation project, stormwater management system, zero
48 emission vehicle charging infrastructure, flood resistant

1 construction project, and hurricane resistant construction project
2 which is undertaken by the owner of real property located within a
3 participating municipality and permanently affixed to such
4 property.

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

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

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

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

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

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

47 (2) the qualifications and requirements for a proposed PACE
48 project, including the qualifications and requirements for projects

1 other than energy efficiency improvements and renewable energy
2 systems, which may include, without limitation, resiliency-related
3 projects, water efficiency improvements, and energy storage,
4 microgrid, and combined heat and power projects;

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

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

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

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

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

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

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

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

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

4 (4) include certain specified consumer protection provisions.

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

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

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

32 Lastly, the bill would amend the “county improvement
33 authorities law” to add to the purposes of a county improvement
34 authority the implementation, management, oversight, and
35 administration of a NJPACE program pursuant to the bill.