

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	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
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.).