

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.