

[Second Reprint]

**ASSEMBLY, No. 2080**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**Assemblyman TIM EUSTACE**

**District 38 (Bergen and Passaic)**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

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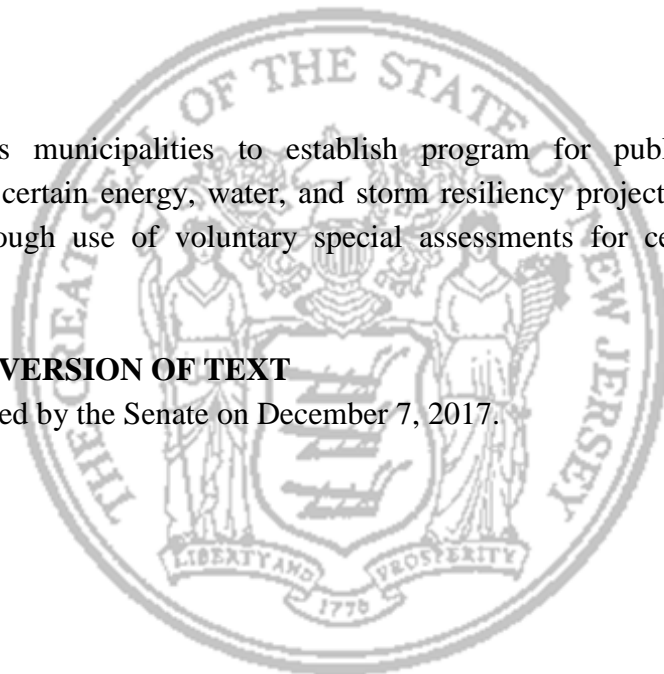
**Assemblymen Benson, McKeon, Assemblywoman Spencer, Assemblyman Gusciora and Assemblywoman Pinkin**

**SYNOPSIS**

Authorizes municipalities to establish program for public or private financing of certain energy, water, and storm resiliency projects under PACE program through use of voluntary special assessments for certain property owners.

**CURRENT VERSION OF TEXT**

As amended by the Senate on December 7, 2017.



**(Sponsorship Updated As Of: 12/19/2017)**

1 AN ACT concerning the implementation of renewable energy and  
 2 energy efficiency systems and water conservation, storm shelter  
 3 construction, <sup>2</sup>**[and]**<sup>2</sup> flood and hurricane resistance projects,  
 4 <sup>2</sup>energy storage, microgrids, and district heating and cooling  
 5 system projects,<sup>2</sup> amending P.L.1960, c.183 <sup>2,2</sup> and <sup>2</sup>amending  
 6 and supplementing<sup>2</sup> P.L.2011, <sup>1</sup>c.187 <sup>2</sup>**[and supplementing**  
 7 **chapter 56 of Title 40 of the Revised Statutes]**<sup>2</sup>.

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

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

14 a. The implementation of and investing in energy and water  
 15 efficiency improvements to, and flood and hurricane mitigation  
 16 projects for <sup>2,2</sup> existing properties is a critical component in  
 17 conserving natural resources and mitigating the effects of floods  
 18 and hurricanes, and is financially beneficial over time; <sup>2</sup>and<sup>2</sup>  
 19 upfront costs are a barrier to major energy improvements;

20 b. PACE legislation provides an innovative way for property  
 21 owners to finance energy and water efficiency improvements which,  
 22 in turn, <sup>2</sup>**[result]** results<sup>2</sup> in <sup>1</sup>**[homeowners]** property owners<sup>1</sup>  
 23 saving a significant sum in energy costs <sup>2</sup>**[and which also help]**  
 24 helps<sup>2</sup> communities create local jobs, <sup>2</sup>**[result]** results<sup>2</sup> in lower  
 25 mortgage foreclosures, and <sup>2</sup>**[stimulate]** stimulates<sup>2</sup> local  
 26 <sup>2</sup>**[economics]** economics<sup>2</sup> and lower emissions; and

27 c. PACE financing will allow New Jersey municipalities to  
 28 contribute <sup>2</sup>**[in order to help meet]** toward meeting<sup>2</sup> community  
 29 sustainability, greenhouse gas emissions reductions, and energy  
 30 goals, and will provide a valuable service to the citizens of their  
 31 communities.

32  
 33 2. (New section) As used in <sup>2</sup>**[this section, and in]**<sup>2</sup> P.L.2011,  
 34 c.187 (C.40:56-1.4 et al.):

35 "Bonds" mean bonds or other obligations issued by a  
 36 municipality, county, or county improvement authority, as  
 37 applicable, for the purposes set forth in this section and in P.L.2011,  
 38 c.187 (C.40:56-1.4 et al.).

39 <sup>1</sup>"Director" means the Director of the Division of Local  
 40 Government Services in the Department of Community Affairs.<sup>1</sup>

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted June 20, 2016.

<sup>2</sup>Senate floor amendments adopted December 7, 2017.

1 <sup>2</sup>“District heating and cooling system” means a local piping  
2 system that provides hot water, steam, or chilled water from one or  
3 more sources to multiple buildings.<sup>2</sup>

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

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

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

24 <sup>2</sup>“Microgrid” means a group of interconnected loads and  
25 distributed energy resources within clearly defined electrical  
26 boundaries that acts as a single controllable entity with respect to  
27 the grid and that connects and disconnects from the grid to enable it  
28 to operate when both connected to, or independent of, the grid.<sup>2</sup>

29 "PACE" is an acronym for the term "property assessed clean  
30 energy."

31 "PACE project" means <sup>2</sup>(1)<sup>2</sup> the purchase, lease, or installation,  
32 or any combination thereof, of renewable energy systems or the  
33 energy produced by such systems, energy efficiency improvements,  
34 <sup>1</sup>energy storage, <sup>2</sup>[microgrids, <sup>1</sup>]<sup>2</sup> water conservation projects, flood  
35 resistant construction projects, hurricane resistant construction  
36 projects, storm shelter projects, or safe room projects <sup>2</sup>[,] which  
37 are<sup>2</sup> undertaken by property owners <sup>1</sup>[through a purchase contract,  
38 lease, power purchase agreement, or through other agreements or  
39 means,]<sup>1</sup> <sup>2</sup>[on properties]<sup>2</sup> within a municipality <sup>2</sup>and permanently  
40 affixed to each participating property, and in the case of a lease,  
41 continue for the duration of the PACE special assessment, or (2)  
42 participation by property owners within the municipality in a  
43 microgrid or district heating and cooling system provided that each  
44 property owner’s participation contractually continues for the  
45 duration of the PACE special assessment<sup>2</sup> .

46 "PACE program" means a program established by a municipality  
47 by ordinance, providing for the imposition of PACE special

1 assessments on properties within the municipality, in which the  
2 owner of such property has requested the PACE special assessment.

3 "PACE special assessment" means a local improvement  
4 assessment, in accordance with chapter 56 of Title 40 of the  
5 Revised Statutes, to be imposed on a property in connection with a  
6 PACE project.

7 "Private entity" means a private for-profit or non-profit  
8 corporation, partnership, or any other form of private organization,  
9 including but not limited to a "related competitive business segment  
10 of a public utility holding company," or a "related competitive  
11 business segment of an electric public utility or gas public utility,"  
12 as defined under section 3 of P.L.1999, c.23 (C.48:3-51), so long as  
13 the organization is not subject to the jurisdiction of the Board of  
14 Public Utilities.

15 "Project costs" mean the costs associated with a PACE project,  
16 and shall be deemed to include: the hard costs of leasing,  
17 purchasing, constructing or acquiring the project; soft costs,  
18 including but not limited to engineering fees, inspection fees and  
19 permits, and costs relating to the measurement and verification of  
20 project savings; costs of utilizing the PACE program, including but  
21 not limited to program fees, closing costs, and interest and other  
22 financing charges; and bond issuance costs, including but not  
23 limited to professional fees and the costs of funding capitalized  
24 interest, if any, or a debt service reserve fund, if any.

25 "Property" means an industrial, agricultural, <sup>1</sup>~~residential~~<sup>1</sup> or  
26 commercial property <sup>1</sup>, residential property with five or more  
27 dwelling units, or property owned by a tax-exempt or nonprofit  
28 entity <sup>2</sup>~~.~~<sup>2</sup> including schools, hospitals, institutions of higher  
29 education, or religious institutions,<sup>1</sup> within a municipality upon  
30 which a PACE special assessment is imposed at the request of a  
31 property owner in connection with a PACE project.

32 "Property owner" means the owner of a property within a  
33 municipality who requests that a PACE special assessment be  
34 imposed on the property in connection with a PACE project.

35 "Renewable energy system" means an improvement in which the  
36 electrical, mechanical, or thermal energy is produced from a method  
37 that uses one or more of the following fuels or energy sources:  
38 hydrogen, solar energy, geothermal energy, bio-mass or wind  
39 energy.

40 "Safe room project" or "storm shelter project" means an  
41 improvement that creates a hardened structure specifically designed  
42 to meet criteria set forth by the Federal Emergency Management  
43 Agency and provide "near-absolute protection" in extreme weather  
44 events, including tornados and hurricanes.

45 "Solar renewable energy certificate" shall have the same  
46 meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

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

7 1. **【Upon application to and approval by the Director of the**  
8 **Division of Local Government Services in the Department of**  
9 **Community Affairs, the】** a. <sup>1</sup>**【The】** <sup>2</sup>**【Upon application to and**  
10 **approval by the Director of the Division of Local Government**  
11 **Services in the Department of Community Affairs, the<sup>1</sup>】** **The<sup>2</sup>**  
12 **governing body of a municipality may adopt an ordinance to**  
13 **undertake the 【financing of the purchase and installation of**  
14 **renewable energy system and energy efficiency improvements】**  
15 **development, implementation, administration, or financing, or any**  
16 **combination thereof, of a PACE program. <sup>2</sup>All PACE programs**  
17 **shall expire 10 years from the date of enactment of P.L. ,**  
18 **c. (C. ) (pending before the Legislature as this bill). A**  
19 **municipality shall not adopt a PACE program, and no new PACE**  
20 **special assessments may be imposed, 10 years after the date of**  
21 **enactment of P.L. , c. (C. ) (pending before the Legislature**  
22 **as this bill), but any PACE special assessment properly imposed**  
23 **during the 10-year period shall continue during and to the end of its**  
24 **contractual period.<sup>2</sup>**

25 <sup>1</sup>**【b. Notwithstanding subsection a. of this section, municipalities**  
26 **that (1) are receiving, or have received State Aid through the**  
27 **Transitional Aid to Localities program within the three most recent**  
28 **fiscal years, (2) are subject to State supervision pursuant to the**  
29 **"Local Government Supervision Act (1947)," P.L.1947, c.151**  
30 **(C.52:27BB-1 et seq.), or (3) are subject to the "Municipal**  
31 **Rehabilitation and Economic Recovery Act," P.L.2002, c.43**  
32 **(C.52:27BBB-1 et al.) are prohibited from developing, financing, or**  
33 **otherwise administering a PACE program unless the municipality**  
34 **designates, by ordinance, a county or county improvement authority**  
35 **to develop, administer, and finance a PACE program to serve the**  
36 **residents of the municipality. Notwithstanding any such**  
37 **designation, the municipality shall continue to possess all rights to**  
38 **impose, assess, collect and enforce any assessment imposed**  
39 **pursuant to P.L.2011, c.187 (C.40:56-1.4 et al.).】<sup>1</sup>**

40 **The PACE program shall consist of, among other things, the**  
41 **implementation of PACE projects to be undertaken by property**  
42 **owners as 【a】 local 【improvement】 improvements and 【may**  
43 **provide】 the provision by ordinance for a 【"clean energy】 "PACE**  
44 **special assessment" to be imposed on 【a property】 properties within**  
45 **the municipality, if the owner of 【the】 a property requests the**  
46 **PACE special assessment in order to 【install such systems or**

1 improvements] undertake a PACE project. [Each improvement]  
 2 PACE projects on an individual property subject to the same PACE  
 3 special assessment agreement collectively shall constitute a separate  
 4 local improvement and shall be assessed separately to the property  
 5 owner benefitted thereby. [The clean energy special assessment  
 6 shall be payable in quarterly installments. The terms of the clean  
 7 energy special assessment shall be in accordance with the terms of  
 8 the financing provided by the municipality pursuant to section 2 of  
 9 P.L.2011, c.187 (C.40:56-13.1).]

10 <sup>1</sup>[c.] b.<sup>1</sup> A municipality <sup>1</sup>[, or county or county improvement  
 11 authority if designated by a municipality under subsection b. of this  
 12 section,]<sup>1</sup> may designate a county, county improvement authority,  
 13 another public entity, or one or more private entities to manage,  
 14 oversee, administer, finance <sup>2,2</sup> or implement, or any combination  
 15 thereof, all or any part of the PACE program on the municipality's  
 16 behalf. To the extent that a county, county improvement  
 17 authority <sup>2,2</sup> or other public entity is designated to manage, oversee,  
 18 administer, finance <sup>2,2</sup> or implement, or any combination thereof,  
 19 all or any part of a PACE program on the municipality's behalf, the  
 20 county, county improvement authority <sup>2,2</sup> or other public entity may  
 21 designate <sup>1</sup>[a]<sup>1</sup> one or more private entities to manage, oversee,  
 22 administer, finance, or implement, or any combination thereof, all  
 23 or any portion of such activities.

24 <sup>2</sup>c. The director shall prepare within five years after the date of  
 25 enactment of P.L. , c. (C. ) (pending before the Legislature as  
 26 this bill) a report that reviews and assesses all PACE programs  
 27 operating in the State. The report shall evaluate the PACE  
 28 programs in effect, and shall review foreclosure rates, cost-  
 29 effectiveness of PACE projects, reasonableness of costs to property  
 30 owners, and any other factors the director deems appropriate. The  
 31 report shall also identify and recommend any legislative changes to  
 32 the law authorizing the PACE program that may be necessary. The  
 33 report shall be posted on the Internet website of the Department of  
 34 Community Affairs and submitted, pursuant to section 2 of  
 35 P.L.1991, c.164 (C.52:14-19.1), to the Legislature.<sup>2</sup>

36 (cf: P.L.2011, c.187, s.1)

37

38 4. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to  
 39 read as follows:

40 2. a. A county, county improvement authority <sup>2,2</sup> or other  
 41 public entity, or a private entity designated by a municipality or a  
 42 county, county improvement authority <sup>2,2</sup> or other public entity,  
 43 pursuant to subsection b. <sup>1</sup>[or c.]<sup>1</sup> of section 1 of P.L.2011, c.187  
 44 (C.40:56-1.4) to administer or implement a PACE program <sup>2,2</sup> may:  
 45 administer agreements between a private entity and property  
 46 owners; administer agreements between municipalities and property

1 owners pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2);  
2 administer agreements involving county improvement authorities  
3 pursuant to paragraph (2) of subsection (j) of section 12 of  
4 P.L.1960, c.183 (C.40:37A-55); administer agreements involving  
5 private entities that participate in the program; administer the sale  
6 of solar renewable energy certificates from participating property  
7 owners; and undertake any other appropriate responsibilities as set  
8 forth in its agreement with the municipality, county, county  
9 improvement authority, or other public entity, as applicable. <sup>1</sup>Any  
10 contract between the entity and a municipality, county, or county  
11 improvement authority shall be subject to the "Local Public  
12 Contracts Law, P.L.1971, c.198 (C.40A:11-1 et seq.).<sup>1</sup>

13 b. <sup>1</sup>【Notwithstanding the provisions of the "Local Public  
14 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), agreements  
15 between a municipality, county, or county improvement authority  
16 and a private entity shall be on such terms and conditions as the  
17 municipality, county, or county improvement authority shall deem  
18 necessary or desirable.】 <sup>2</sup>【Upon application to and approval by the  
19 Director of Local Government Services in the Department of  
20 Community Affairs, a】 A<sup>2</sup> municipality may adopt an ordinance to  
21 undertake the development, implementation, administration, or  
22 financing, or any combination thereof, of a PACE program <sup>2</sup>as  
23 provided in P.L.2011, c.187 (C.40:56-1.4 et al.) <sup>2</sup> .<sup>1</sup>

24 【Upon application to and approval by the Director of Local  
25 Government Services in the Department of Community Affairs, a  
26 municipality may adopt an ordinance to establish a program to  
27 finance the purchase and installation of renewable energy systems  
28 and energy efficiency improvements by property owners.】

29 c. The governing body of a municipality may apply to a county,  
30 or to a county improvement authority that issues bonds pursuant to  
31 paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183  
32 (C.40:37A-55), or may issue bonds to finance the program pursuant  
33 to section 3 of P.L.2011, c.187 (C.40:56-13.2).

34 (1) Notwithstanding any other law to the contrary, bonds issued  
35 by a county or municipality shall be authorized and issued by  
36 ordinance of such county or municipality, may be issued in one or  
37 more series, on such additional terms and may be sold at public or  
38 private sale, all as set forth in the ordinance.

39 (2) (a) Bonds issued by a municipality, county, county  
40 improvement authority or other public entity shall be non-recourse  
41 obligations of such issuer and shall not be a general obligation of  
42 such issuer, or the State of New Jersey.

43 (b) <sup>1</sup>【No review of the Local Finance Board with respect to the  
44 authorization or issuance of the bonds shall be required.

45 (c)】<sup>1</sup> Bonds issued by a county improvement authority shall be  
46 authorized and issued in the manner set forth in the "county

1 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et  
2 seq.).

3 (3) In addition, the municipal governing body, or the entity  
4 servicing as its administrator, may use funding through private  
5 entities or public entities to finance the PACE program; provided  
6 that no such funding shall be guaranteed or secured by the full faith  
7 and credit of any public entity, including the State of New Jersey.  
8 Funds for the **【purchase and installation of renewable energy**  
9 **systems and energy efficiency improvements shall be loaned】**  
10 **implementation of PACE projects shall be made available to**  
11 **property owners in exchange for a 【clean energy】 PACE special**  
12 **assessment on the property pursuant to section 1 of P.L.2011, c.187**  
13 **(C.40:56-1.4) 【, to be paid quarterly】. 【In the case of financing**  
14 **provided by bonds issued by a county improvement authority, the**  
15 **clean energy】 The PACE special assessment shall be used to repay**  
16 **the debt service on the bonds <sup>1</sup>【or other public entity or private**  
17 **entity financing obligations】<sup>1</sup> and the project costs. 【In the case of**  
18 **financing provided by the municipality through the issuance of**  
19 **municipal bonds, the clean energy special assessment shall be used**  
20 **to repay the bonds.】**

21 **d.** A property owner who **【purchases and】** installs a renewable  
22 energy system under the program may also **<sup>1</sup>【, if permitted by the**  
23 **municipality,】<sup>1</sup> assign or transfer any solar renewable energy**  
24 **certificates or other renewable energy certificates or credits that**  
25 **accrue to the property owner from the operation of the system to the**  
26 **municipality 【or】 the county improvement authority 【to repay the**  
27 **loan for the system】 , other public entity, or the private entity, as**  
28 **applicable, which has financed the PACE project. If any solar**  
29 **renewable energy certificates or other renewable energy certificates**  
30 **or credits are assigned or transferred to a municipality, county,**  
31 **county improvement authority, other public entity, or private entity,**  
32 **the municipality, county, county improvement authority, other**  
33 **public entity, or private entity is authorized to sell, grant, assign,**  
34 **convey or otherwise dispose of its interest in the certificates or**  
35 **credits to repay the bonds or obligations and the project costs. 【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 **b.** As used in this section,

44 "solar renewable energy certificate" shall have the same meaning  
45 as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).】

46 (cf: P.L.2011, c.187, s.2)

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

3       3. a. **【**Upon application to and approval by the Director of  
4 Local Government Services in the Department of Community  
5 Affairs, the governing body of a municipality may establish the  
6 amounts of money to be expended by the municipality for the  
7 improvements authorized in sections 1 and 2 of P.L.2011, c.187  
8 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may  
9 be raised by the issuance of clean energy special assessment bonds  
10 by the municipality. In making the appropriation, the governing  
11 body may designate the particular projects to be financed to which  
12 the moneys shall be applied.**】** Notwithstanding any provision of  
13 chapter 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.),  
14 or any other law to the contrary, a municipality shall follow the  
15 following process to establish and implement a PACE program:

16       (1) A municipality may adopt an ordinance pursuant to  
17 R.S.40:49-2 to establish a PACE program <sup>1</sup>【without complying  
18 with the publication, notice, and other requirements applicable to  
19 ordinances providing for local improvements otherwise required  
20 pursuant to R.S.40:49-6】 . A municipal ordinance establishing a  
21 PACE program <sup>2</sup>【shall】 may<sup>2</sup> provide for eligibility requirements  
22 for participation in the program and project development guidelines  
23 for PACE projects <sup>2</sup>【using industry best practices<sup>1</sup>】<sup>2</sup> .

24       (2) The municipal ordinance <sup>1</sup>【may, but shall not be required  
25 to,】 shall<sup>1</sup> establish a form of special assessment agreement to be  
26 entered into with PACE program participants, and identify whether  
27 the PACE program will be implemented, financed, and managed by  
28 the municipality, county, or by a county improvement authority, or  
29 by another public entity or private entity. <sup>1</sup>【In lieu of including  
30 such information in the ordinance establishing the PACE program,  
31 the municipality may instead provide that one or more such items  
32 shall be established through a subsequent municipal resolution.】<sup>1</sup>

33       (3) The municipal ordinance shall prescribe criteria for  
34 participation in the PACE program at the time of the initial  
35 financing, which criteria shall include, at a minimum, the following:  
36 (a) that PACE financing recipients are either the legal owners of the  
37 underlying property or provide the written consent of the legal  
38 owners of the underlying property, are current on mortgage and  
39 property tax payments with respect to the underlying property, and  
40 are not the subject of a default or in bankruptcy proceedings, and  
41 (b) an appropriate ratio of the assessment to the value of the  
42 property, but in no circumstance may the combination of a PACE  
43 financing and the existing loan-to-value ratio on a property exceed  
44 <sup>1</sup>【100】 90<sup>1</sup> percent <sup>2</sup>of the appraised value of the property  
45 including the value of the PACE project. The municipal ordinance  
46 shall also require that an appraisal shall be required if one is not  
47 conducted by the lender for the PACE project<sup>2</sup> . The ordinance

1 may establish standards for the maximum amount, or duration of  
2 PACE special assessments, or both, but in no event shall the  
3 maximum duration of a PACE special assessment exceed 30 years.

4 <sup>2</sup>(4) The municipal ordinance shall require that a disclosure  
5 form summarizing PACE financing risks provided by the PACE  
6 program administrator and the lender shall be signed by the owner  
7 of each property. The disclosure form shall include, but need not be  
8 limited to, the following information:

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

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

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

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

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

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

20 (g) lack of guarantee by the PACE program or PACE program  
21 administrator of availability of local, State, or federal tax credits or  
22 other incentives; and

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

25 (5) The municipal ordinance shall also require that the PACE  
26 program include the following consumer protection provisions:

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

29 (b) a requirement to provide information to the property owner  
30 on the total cost of the PACE project for the life of the agreement  
31 including interest or fees to be paid, total number of payments,  
32 payment frequency, amount of each payment, and warranty or  
33 maintenance obligations; and

34 (c) a prohibition restricting specific monetary or percentage  
35 estimates on property value changes as a result of the PACE  
36 project.<sup>2</sup>

37 b. **【Clean energy special assessments and bonds issued to**  
38 **finance them shall be issued and shall be generally subject to**  
39 **R.S.40:56-21 et seq., as the director shall determine to be**  
40 **applicable.】** The amount of a PACE special assessment shall be a  
41 specific amount, not to exceed the project costs of the PACE  
42 project. The specific amount of a PACE special assessment, which  
43 shall be consented to by the property owner by its execution of a  
44 special assessment agreement in the form promulgated by the  
45 municipality, shall be deemed the benefit conferred with respect to  
46 the property and shall be in lieu of the amount being determined by  
47 any other procedures contained in this Title otherwise applicable to  
48 determining the actual benefit conferred on the property. No other

1 confirmation or determination of the amount of the PACE special  
2 assessment, including, but not limited to the procedure set forth at  
3 R.S.40:56-30, shall be required.

4 c. **【**The director is authorized and empowered to take such  
5 action as deemed necessary and consistent with the intent of this act  
6 to implement its provisions.**】** <sup>1</sup>**【A】** Subject to the written consent  
7 of existing mortgage holders, a<sup>1</sup> PACE special assessment shall be  
8 a single, continuous first lien on the property against which the  
9 PACE special assessment agreement is recorded, on and after the  
10 date of recordation of the agreement. Upon recordation of the  
11 PACE special assessment agreement in the land records of the  
12 county in which the property is located, the lien thereof shall be  
13 perfected for all purposes in accordance with law and the lien shall  
14 be a continuous first lien upon the real estate described in the  
15 assessment, paramount to all prior or subsequent alienations and  
16 descents of such real estate or encumbrances thereon, except  
17 subsequent taxes or assessments, without any additional notice,  
18 recording, filing, continuation filing or action, until payment in full  
19 of the PACE special assessment, notwithstanding any mistake in the  
20 name or names of any owner or owners, or any omission to name  
21 any owner or owners who are unknown, and notwithstanding any  
22 lack of form therein, or in any other proceeding which does not  
23 impair the substantial rights of the owner or owners or other person  
24 or persons having a lien upon or interest in any such real estate.  
25 Any confirmation of the amount of the assessment by the governing  
26 body or by the court shall be considered as determining the amount  
27 of the existing lien and not as establishing the lien. All assessments  
28 shall be presumed to have been regularly assessed and confirmed  
29 and every assessment or proceeding preliminary thereto shall be  
30 presumed to have been regularly made or conducted until the  
31 contrary be shown. A PACE special assessment shall not be  
32 considered an "equivalent consensual security interest" for the  
33 purposes of the "New Jersey Residential Mortgage Lending Act,"  
34 sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).  
35 PACE special assessments shall be treated as <sup>2</sup>**【governmental】**  
36 municipal<sup>2</sup> liens rather than contractual liens for all purposes of  
37 law.

38 d. The funds to implement a PACE project may be disbursed to  
39 the property owner at execution of the special assessment  
40 agreement, or may be disbursed in installments over time. Such  
41 funds shall not constitute public funds, and shall not be subject to  
42 the laws governing public funds, including but not limited to laws  
43 regarding the receipt, expenditure, deposit, investment or  
44 appropriation of the same. PACE projects shall not be considered  
45 "facilities" or "public facilities," within the meaning of the "county  
46 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et  
47 seq.). Payments of PACE special assessments shall be due on

1 February 1, May 1, August 1 and November 1 in each year, and  
2 shall commence as set forth in the PACE special assessment  
3 agreement. <sup>1</sup>It is not required that a PACE project be completed in  
4 order for the obligation to make payments of the PACE special  
5 assessment to commence.]<sup>1</sup> To the extent that upon completion of  
6 the PACE project, funds remain which have not been disbursed to  
7 the property owner for a PACE project, those funds on hand shall  
8 be used to reduce the amount of the PACE special assessment.  
9 <sup>1</sup>To the extent that during the implementation of a PACE project,  
10 it becomes apparent that additional funds may be needed to  
11 complete the PACE project, the municipality and the property  
12 owner may enter into a supplemental special assessment agreement  
13 for the additional amount. Upon recordation of the supplemental  
14 special assessment agreement, payments required to be made  
15 pursuant to the supplemental PACE special assessment for the  
16 completion of the PACE project shall be a continuous lien against  
17 the property in accordance with subsection c. of this section.]<sup>1</sup>

18 e. <sup>2</sup>When Except as provided in subsection g. of this section,  
19 if<sup>2</sup> any payment of a PACE special assessment <sup>2</sup>shall is<sup>2</sup> not  
20 <sup>2</sup>be<sup>2</sup> made within <sup>2</sup>30 10<sup>2</sup> days after the time when that  
21 payment shall have become due, <sup>2</sup>or later, consistent with any grace  
22 period provided or extended by a municipality for the payment of  
23 property tax bills, <sup>2</sup>interest thereon shall be imposed at the same  
24 rate as may be imposed upon unpaid property taxes in the  
25 municipality, and collected and enforced in the same manner as  
26 unpaid property taxes, including by accelerated tax sale if the  
27 municipality shall enforce collection of its unpaid property taxes  
28 through accelerated tax sale. However, the balance due on PACE  
29 special assessments shall not be subject to acceleration in the event  
30 of a default in payment. Notwithstanding any other provision of  
31 law, in the event that any lien on the property shall be exposed to  
32 tax sale, pursuant to the "tax sale law," R.S.54:5-1 et seq., and any  
33 such lien is struck off and sold to the municipality, the PACE  
34 special assessment shall survive any subsequent action to foreclose  
35 the right of redemption and continue as a first lien upon the real  
36 estate described in the assessment, paramount to all prior or  
37 subsequent alienations and descents of such real estate or  
38 encumbrances thereon, except subsequent taxes or assessments, and  
39 provided that, <sup>2</sup>notwithstanding the municipality's obligations  
40 pursuant to section 1 of P.L.1942, c.54 (C.54:5-53.1),<sup>2</sup> while the  
41 municipality holds such lien or owns such property, the  
42 municipality shall not be responsible for or required to make any  
43 payment in furtherance of or to satisfy any such PACE special  
44 assessment.

45 f. PACE special assessments may be assigned directly by the  
46 municipality, and any assignee thereof, as security for the  
47 repayment of:

1       (1) bonds or other obligations issued by the municipality, county  
2 or the county improvement authority to finance the PACE projects,  
3 and

4       (2) if a PACE project is financed by a public entity or private  
5 entity, any obligations of a property owner with respect to such  
6 PACE project to such private entity or public entity, or any assignee  
7 thereof.

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

27       <sup>1</sup>[g. Notwithstanding any other law to the contrary, a  
28 municipality, county or county improvement authority, or, any of  
29 them, as applicable, shall have the power to enter into any and all  
30 agreements as may be necessary or desirable to effectuate the  
31 purposes of P.L.2011, c.187 (C.40:56-1.4 et al.), on such terms and  
32 conditions as the municipality, county or county improvement  
33 authority shall deem reasonable, with or without public bidding.

34       h. In the event of any inconsistency between the provisions of  
35 P.L.2011, c.187 (C.40:56-1.4 et al.) as modified by  
36 P.L. c. (C. ) (pending before the Legislature as this bill),  
37 with respect to a PACE special assessment, and the provisions of  
38 chapter 56 of Title 40 of the Revised Statutes, or any other law, the  
39 provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) shall control.】<sup>1</sup>

40       <sup>2</sup>g. Notwithstanding any other law to the contrary, in any  
41 foreclosure action due to nonpayment or late payment of a PACE  
42 special assessment for property in the PACE program, service of the  
43 complaint on all parties shall be made by personal service, hand-  
44 delivered by the sheriff or personal process server, and the  
45 procedure for obtaining a final judgment shall conform to the

1 procedures and requirements of the In Personam foreclosure  
2 process.<sup>2</sup>

3 (cf: P.L.2011, c.187, s.3)

4

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

7 11. The purposes of every authority shall be (a) provision within  
8 the county or any beneficiary county of public facilities for use by  
9 the State, the county or any beneficiary county, or any municipality  
10 in any such county, or any two or more or any subdivisions,  
11 departments, agencies or instrumentalities of any of the foregoing  
12 for any of their respective governmental purposes, (b) provision  
13 within the county or any beneficiary county of public facilities for  
14 use as convention halls, or the rehabilitation, improvement or  
15 enlargement of any convention hall, including appropriate and  
16 desirable appurtenances located within the convention hall or near,  
17 adjacent to or over it within boundaries determined at the discretion  
18 of the authority, including but not limited to office facilities,  
19 commercial facilities, community service facilities, parking  
20 facilities, hotel facilities and other facilities for the accommodation  
21 and entertainment of tourists and visitors, (c) provision within the  
22 county or any beneficiary county of structures, franchises,  
23 equipment and facilities for operation of public transportation or for  
24 terminal purposes, including development and improvement of port  
25 terminal structures, facilities and equipment for public use in  
26 counties in, along or through which a navigable river flows, (d)  
27 provision within the county or any beneficiary county of structures  
28 or other facilities used or operated by the authority or any  
29 governmental unit in connection with, or relative to development  
30 and improvement of, aviation for military or civilian purposes,  
31 including research in connection therewith, and including structures  
32 or other facilities for the accommodation of passengers, (e)  
33 provision within the county or any beneficiary county of a public  
34 facility for a combination of governmental and nongovernmental  
35 uses; provided that not more than 50% of the usable space in any  
36 such facility shall be made available for nongovernmental use under  
37 a lease or other agreement by or with the authority, (f) acquisition  
38 of any real property within the county or any beneficiary county,  
39 with or without the improvements thereof or thereon or personal  
40 property appurtenant or incidental thereto, from the United States of  
41 America or any department, agency or instrumentality heretofore or  
42 hereafter created, designated or established by or for it, and the  
43 clearance, development or redevelopment, improvement, use or  
44 disposition of the acquired lands and premises in accordance with  
45 the provisions and for the purposes stated in **【this act】** the "county  
46 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et  
47 seq.), including the construction, reconstruction, demolition,  
48 rehabilitation, conversion, repair or alteration of improvements on

1 or to said lands and premises, and structures and facilities incidental  
2 to the foregoing as may be necessary, convenient or desirable, (g)  
3 acquisition, construction, maintenance and operation of garbage and  
4 solid waste disposal systems for the purpose of collecting and  
5 disposing of garbage, solid waste or refuse matter, whether owned  
6 or operated by any person, the authority or any other governmental  
7 unit, within or without the county or any beneficiary county, (h) the  
8 improvement, furtherance and promotion of the tourist industries  
9 and recreational attractiveness of the county or any beneficiary  
10 county through the planning, acquisition, construction,  
11 improvement, maintenance and operation of facilities for the  
12 recreation and entertainment of the public, which facilities may  
13 include, without being limited to, a center for the performing and  
14 visual arts, (i) provision of loans and other financial assistance and  
15 technical assistance for the construction, reconstruction, demolition,  
16 rehabilitation, conversion, repair or alteration of buildings or  
17 facilities designed to provide decent, safe and sanitary dwelling  
18 units for persons of low and moderate income in need of housing,  
19 including the acquisition of land, equipment or other real or  
20 personal properties which the authority determines to be necessary,  
21 convenient or desirable appurtenances, all in accordance with the  
22 provisions of this act, as amended and supplemented, (j) planning,  
23 initiating and carrying out redevelopment projects for the  
24 elimination, and for the prevention of the development or spread of  
25 blighted, deteriorated or deteriorating areas and the disposition, for  
26 uses in accordance with the objectives of the redevelopment project,  
27 of any property or part thereof acquired in the area of such project,  
28 (k) any combination or combinations of the foregoing or following,  
29 and (l) subject to the prior approval of the Local Finance Board, the  
30 planning, design, acquisition, construction, improvement,  
31 renovation, installation, maintenance and operation of facilities or  
32 any other type of real or personal property within the county for a  
33 corporation or other person organized for any one or more of the  
34 purposes described in subsection a. of N.J.S.15A:2-1 except those  
35 facilities or any other type of real or personal property which can be  
36 financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et  
37 seq.) as amended. A county improvement authority shall also have  
38 as its purpose the pooling of loans for any local governmental units  
39 within the county or any beneficiary county that are refunding  
40 bonds in order to achieve more favorable interest rates and terms  
41 for those local governmental units. A county improvement  
42 authority shall also have as its purpose the implementation,  
43 management, oversight, administration, and financing of a PACE  
44 program, as defined in section <sup>2</sup>[1] <sup>2</sup> of P.L. , c. (C. )  
45 (pending before the Legislature as this bill).  
46 (cf: P.L.2002, c.42, s.8)

1       7. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to  
2 read as follows:

3       12. Every authority shall be a public body politic and corporate  
4 constituting a political subdivision of the State established as an  
5 instrumentality exercising public and essential governmental  
6 functions to provide for the public convenience, benefit and welfare  
7 and shall have perpetual succession and, for the effectuation of its  
8 purposes, have the following additional powers:

9       (a) To adopt and have a common seal and to alter the same at  
10 pleasure;

11       (b) To sue and be sued;

12       (c) To acquire, hold, use and dispose of its facility charges and  
13 other revenues and other moneys;

14       (d) To acquire, rent, hold, use and dispose of other personal  
15 property for the purposes of the authority;

16       (e) Subject to the provisions of section 26 of **[this act]**  
17 P.L.1960, c.183 (C.40:37A-69), to acquire by purchase, gift,  
18 condemnation or otherwise, or lease as lessee, real property and  
19 easements or interests therein necessary or useful and convenient  
20 for the purposes of the authority, whether subject to mortgages,  
21 deeds of trust or other liens or otherwise, and to hold and to use the  
22 same, and to dispose of property so acquired no longer necessary  
23 for the purposes of the authority; provided that the authority may  
24 dispose of such property at any time to any governmental unit or  
25 person if the authority shall receive a leasehold interest in the  
26 property for such term as the authority deems appropriate to fulfill  
27 its purposes;

28       (f) Subject to the provisions of section 13 of **[this act]**  
29 P.L.1960, c.183 (C.40:37A-56), to lease to any governmental unit  
30 or person, all or any part of any public facility for such  
31 consideration and for such period or periods of time and upon such  
32 other terms and conditions as it may fix and agree upon;

33       (g) To enter into agreements to lease, as lessee, public facilities  
34 for such term and under such conditions as the authority may deem  
35 necessary and desirable to fulfill its purposes, and to agree,  
36 pursuant thereto, to be unconditionally obligated to make payments  
37 for the term of the lease, without set-off or counterclaim, whether or  
38 not the public facility is completed, operating or operable, and  
39 notwithstanding the destruction of, damage to, or suspension,  
40 interruption, interference, reduction or curtailment of the  
41 availability or output of the public facility to which the agreement  
42 applies;

43       (h) To extend credit or make loans to any governmental unit or  
44 person for the planning, design, acquisition, construction, equipping  
45 and furnishing of a public facility, upon the terms and conditions  
46 that the loans be secured by loan and security agreements,  
47 mortgages, leases and other instruments, the payments on which  
48 shall be sufficient to pay the principal of and interest on any bonds

- 1 issued for the purpose by the authority, and upon such other terms  
2 and conditions as the authority shall deem reasonable;
- 3 (i) Subject to the provisions of section 13 of **【this act】** P.L.1960,  
4 c.183 (C.40:37A-56), to make agreements of any kind with any  
5 governmental unit or person for the use or operation of all or any  
6 part of any public facility for such consideration and for such period  
7 or periods of time and upon such other terms and conditions as it  
8 may fix and agree upon;
- 9 (j) (1) To borrow money and issue negotiable bonds or notes or  
10 other obligations and provide for and secure the payment of any  
11 bonds and the rights of the holders thereof, and to purchase, hold  
12 and dispose of any bonds;
- 13 (2) To issue bonds, notes or other obligations to provide funding  
14 **【to a municipality that finances the purchase and installation of**  
15 **renewable energy systems and energy efficiency improvements】** for  
16 the implementation of PACE projects by property owners as  
17 provided in section 2 of P.L.2011, c.187 (C.40:56-13.1), and to  
18 manage, oversee, administer, <sup>2</sup>【implement, and】<sup>2</sup> finance <sup>2</sup>, or  
19 implement, or any combination thereof, all or any part of a<sup>2</sup> PACE  
20 <sup>2</sup>【programs】 program<sup>2</sup> pursuant to subsection b. of section 2 of  
21 P.L.2011, c.187 (C.40:56-13.1);
- 22 (k) To apply for and to accept gifts or grants of real or personal  
23 property, money, material, labor or supplies for the purposes of the  
24 authority from any governmental unit or person, and to make and  
25 perform agreements and contracts and to do any and all things  
26 necessary or useful and convenient in connection with the  
27 procuring, acceptance or disposition of such gifts or grants;
- 28 (l) To determine the location, type and character of any public  
29 facility and all other matters in connection with all or any part of  
30 any public facility which it is authorized to own, construct,  
31 establish, effectuate or control;
- 32 (m) To make and enforce bylaws or rules and regulations for the  
33 management and regulation of its business and affairs and for the  
34 use, maintenance and operation of any public facility, and to amend  
35 the same;
- 36 (n) To do and perform any acts and things authorized by **【this**  
37 **act】** the "county improvement authorities law," P.L.1960, c.183  
38 (C.40:37A-44 et seq.), under, through or by means of its own  
39 officers, agents and employees, or by contract with any  
40 governmental unit or person;
- 41 (o) To acquire, purchase, construct, lease, operate, maintain and  
42 undertake any project and to fix and collect facility charges for the  
43 use thereof;
- 44 (p) To mortgage, pledge or assign or otherwise encumber all or  
45 any portion of its revenues and other income, real and personal  
46 property, projects and facilities for the purpose of securing its  
47 bonds, notes and other obligations or otherwise in furtherance of the

1 purpose of **[this act]** the "county improvement authorities law,"  
2 P.L.1960, c.183 (C.40:37A-44 et seq.);

3 (q) To extend credit or make loans to redevelopers for the  
4 planning, designing, acquiring, constructing, reconstructing,  
5 improving, equipping and furnishing any redevelopment project or  
6 redevelopment work;

7 (r) To conduct examinations and investigations, hear testimony  
8 and take proof, under oath at public or private hearings of any  
9 material matter, require the attendance of witnesses and the  
10 production of books and papers and issue commissions for the  
11 examination of witnesses who are out of the State, unable to attend,  
12 or excused from attendance;

13 (s) To authorize a committee designated by it consisting of one  
14 or more members, or counsel, or any officer or employee to conduct  
15 any such investigation or examination, in which case such  
16 committee, counsel, officer or employee shall have power to  
17 administer oaths, take affidavits and issue subpoenas or  
18 commissions;

19 (t) To enter into any and all agreements or contracts, execute  
20 any and all instruments, and do and perform any and all acts or  
21 things necessary, convenient or desirable for the purposes of the  
22 authority or to carry out any power expressly given in **[this act]** the  
23 "county improvement authorities law," P.L.1960, c.183 (C.40:37A-  
24 44 et seq.), subject to the "Local Public Contracts Law," P.L.1971,  
25 c.198 (C.40A:11-1 et seq.); and

26 (u) To pool loans for any local governmental units within the  
27 county or any beneficiary county that are refunding bonds and do  
28 and perform any and all acts or things necessary, convenient or  
29 desirable for the purpose of the authority to achieve more favorable  
30 interest rates and terms for those local governmental units.

31 (cf: P.L.2011, c.187, s.4)

32

33 8. This act shall take effect immediately.