

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JULY 20, 2020

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman NANCY J. PINKIN

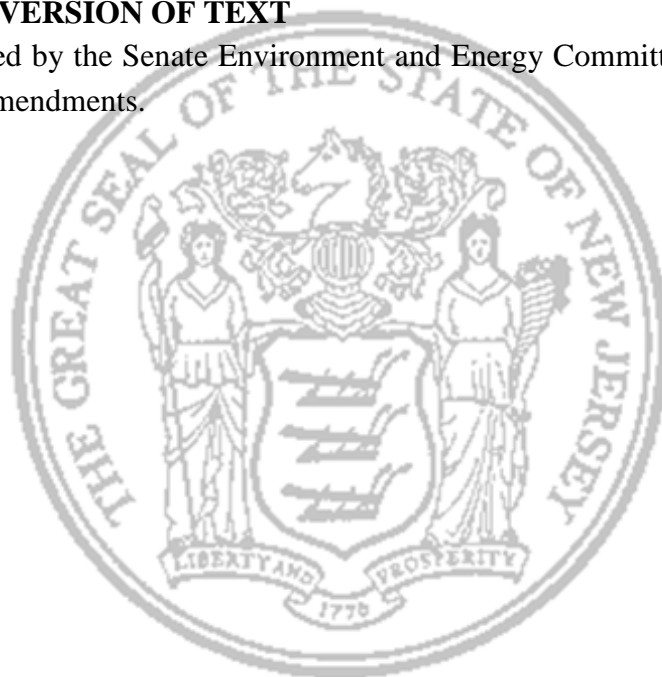
District 18 (Middlesex)

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.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on June 15, 2021, with amendments.



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 Title 34 of the Revised Statutes, and amending
5 P.L.1960, c.183 and P.L.2011, c.187.

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, energy efficiency, and flood and hurricane
14 mitigation improvements to real property is a critical component in
15 conserving natural resources and mitigating the effects of floods and
16 hurricanes;

17 b. The up-front costs of retrofitting properties with these
18 improvements are often a barrier to investing in such improvements,
19 and the additional cost of meeting ²and exceeding² new code
20 requirements in connection with new construction is a deterrent to the
21 investments;

22 c. Recent studies have demonstrated that the existing financing
23 options for these projects have not made them sufficiently available to
24 property owners and developers;

25 d. Property assessed clean energy (“PACE”) financing, in which
26 repayment is made by way of a special assessment on the real property
27 to which the improvement ², including new construction upon
28 previously unimproved real property,² is made, is an innovative way
29 for property owners to finance or refinance renewable energy, energy
30 and water efficiency, and other eligible improvements which, in turn,
31 saves a significant sum in utility costs or insurance premiums, creates
32 jobs, stimulates local economies, reduces greenhouse gas emissions,
33 and improves the ²[safely] safety² and quality of the building stock;

34 e. To date, PACE programs for commercial properties (“C-
35 PACE”) operate in ²more than² 24 other states and the District of
36 Columbia, and they have facilitated more than ²[\$1.5] \$2² billion in
37 investment in over 2,100 C-PACE projects;

38 f. C-PACE financing will enable New Jersey municipalities to
39 contribute toward their goals of community sustainability and reducing
40 greenhouse gas emissions and energy consumption, and will provide a
41 valuable service to the citizens of their communities; and

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:

¹Assembly AAP committee amendments adopted July 27, 2020.

²Senate SEN committee amendments adopted June 15, 2021.

1 g. C-PACE financing serves a valid public purpose and enactment
2 of P.L. , c. (C.) (pending before the Legislature as this bill) is
3 expressly declared to be in the public interest.
4

5 2. (New section) As used in sections 1 through 9 of
6 P.L. , c. (C.) (pending before the Legislature as this bill):

7 ²["Administration agreement" means an agreement between the
8 authority and a participating municipality defining the obligations of a
9 municipality to participate in the Garden State C-PACE program,
10 including the requirement that the participating municipality levy, bill,
11 collect, remit, and enforce a C-PACE assessment.]²

12 "Assignment agreement" means an agreement in which a
13 participating municipality assigns a C-PACE assessment
14 ²[agreement]² to a capital provider, its designee, successor or assign.

15 "Authority" means the New Jersey Economic Development
16 Authority.

17 ²"Authorized municipality" means a municipality with a
18 population that, as of the launch date, is in the top third of
19 municipalities in the State in terms of population, according to the
20 most recent American Community Survey published by the United
21 States Census Bureau.²

22 "Capital provider" means:

23 a. an accredited investor or qualified institutional buyer as
24 defined respectively in Regulation D, Rule 501 (17 C.F.R.230.501
25 through 230.508) or Rule 144A (17 C.F.R.230.144A) of the federal
26 "Securities Act of 1933" (15 U.S.C. s.77a et seq.), as amended;

27 b. the trustee or custodian of a trust or custody arrangement which
28 provides that each beneficial owner of interests shall be an accredited
29 investor or qualified institutional buyer;

30 c. a public entity; ²[or]²

31 d. a special purpose securitization vehicle for the sale and transfer
32 of securities, which is restricted to those persons described in
33 subsections a. or b. of this definition ²; or

34 e. a commercial lending institution chartered by a state or the
35 federal government, including, without limitation, a savings and loan
36 association, a credit union, or a commercial bank² .

37 "C-PACE" means commercial property assessed clean energy.

38 "C-PACE assessment" means a local improvement assessment, in
39 accordance with chapter 56 of Title 40 of the Revised Statutes,
40 imposed by a participating municipality on a property, with the
41 consent of the owner of the property, ²and determined based upon
42 either the existing use of a property or the contemplated use of
43 unimproved property upon completion of new construction,² as a
44 means of securing financing provided pursuant to section 9 of P.L. ,
45 c. (C.) (pending before the Legislature as this bill) to finance a C-
46 PACE project at the property, payments in respect of which

1 assessment are collected by the participating municipality and remitted
2 to the entity that provided the financing or its designee.

3 “C-PACE assessment agreement” means an agreement between a
4 participating municipality and a property owner in which the property
5 owner agrees to the imposition of a C-PACE assessment on the
6 property benefited by a C-PACE project within the municipality, and
7 ²**[by]** in² which the participating municipality agrees to levy, bill,
8 collect, remit, and ², to the extent necessary,² enforce the C-PACE
9 assessment.

10 “C-PACE project” means:

11 a. the acquisition, construction, ²**[lease,]² installation, ²**[or]²**
12 modification ², or, in the discretion of the authority and in accordance
13 with guidelines adopted by the authority, entry into a capital lease² of
14 an energy efficiency improvement or renewable energy system
15 including energy storage, microgrid, water conservation improvement,
16 stormwater management system, electric vehicle charging
17 infrastructure, flood resistant construction improvement, or hurricane
18 resistant construction improvement, in each case affixed to a property,
19 including new construction ²**[of the improvements]** upon previously
20 unimproved real property² , within a participating municipality ²,
21 provided that, on the basis of supplemental program guidelines to be
22 published by the authority within 90 days following the launch date, a
23 qualified professional attests that such new construction exceeds the
24 minimum standards of the local and State building codes otherwise
25 applicable to the property² ;**

26 b. ²at the discretion of, and in accordance with guidelines adopted
27 by, the authority,² a microgrid or district heating and cooling system in
28 which a property owner within the municipality participates for the
29 duration of the C-PACE assessment; or

30 c. ²at the discretion of, and in accordance with guidelines adopted
31 by, the authority,² a power purchase agreement with respect to a
32 renewable energy system affixed to a property.

33 “Direct financing” means financing for a C-PACE project pursuant
34 to a financing agreement entered into between a capital provider and a
35 property owner.

36 “Electric vehicle charging infrastructure” means equipment
37 designed to deliver electric energy to ²**[an]** a battery² electric vehicle
38 or a plug-in hybrid vehicle. ²**[”]²**

39 “Energy efficiency improvement” means an improvement to
40 reduce energy consumption through conservation or a more efficient
41 use of electricity, natural gas, propane, or other forms of energy,
42 including, but not limited to: air sealing; installation of insulation;
43 installation of energy-efficient electrical, heating, cooling, or
44 ventilation systems; building modifications to increase the use of
45 daylight; energy efficient windows, doors, and glass; installation of
46 energy or water controls or energy recovery systems; and installation
47 of efficient lighting equipment.

1 “Finance” or “financing” means the investing of capital in
2 accordance with section 9 of P.L. , c. (C.) (pending before the
3 Legislature as this bill), including ²on the basis of supplemental
4 program guidelines to be published by the authority within 90 days
5 following the launch date,² the refinancing of an investment in an
6 existing C-PACE project.

7 “Flood resistant construction improvement” means an
8 improvement that mitigates the likelihood of flood damage, including,
9 but not limited to, the installation of break-away walls and building
10 elevation alterations.

11 “Garden State C-PACE program” means the program established
12 by the authority pursuant to sections 4 and 5 of P.L. , c. (C.)
13 (pending before the Legislature as this bill).

14 ²“Garden State program agreement” means an agreement between
15 the authority and a participating municipality defining:

16 a. the obligations of a municipality to participate in the Garden
17 State C-PACE program, including the requirement that the
18 participating municipality levy, bill, collect, remit, and enforce a C-
19 PACE assessment; and

20 b. the obligations, if any, that the authority may undertake (1)
21 with respect to the remittance of C-PACE assessments to capital
22 providers if the remittance is authorized by regulations adopted by the
23 Local Finance Board pursuant to section 38 of P.L.2000, c.126
24 (C.52:27D-20.1) and requested by the participating municipality, and
25 (2) to review and approve the participation of individual capital
26 providers or financings in the Garden State C-PACE program. Neither
27 the execution by the authority of a Garden State program agreement
28 with a municipality nor its exercise of its rights or performance of its
29 duties thereunder shall be considered “authority financial assistance”
30 as that term is defined in section 1 of P.L.1979, c.303 (C.34:1B-5.1).²

31 “Hurricane resistant construction improvement” means an
32 improvement that enables a component of a structure to be in
33 compliance with the standards for a “wind-borne debris region”
34 adopted pursuant to the “State Uniform Construction Code Act,”
35 P.L.1975, c.217 (C.52:27D-119 et seq.), or into compliance with a
36 successor standard under that code.

37 ²“Launch date” means the date upon which the authority has taken
38 all of the actions specified in subsection c. of section 5 of P.L. , c.
39 (C.) (pending before the Legislature as this bill), other than any
40 actions that are expressly required by P.L. , c. (C.) (pending
41 before the Legislature as this bill) to be taken within 90 days following
42 the launch date.²

43 “Local C-PACE program” means a program established by ²**[a]**
44 an authorized² municipality ²or a county² pursuant to section 6 of
45 P.L. , c. (C.) (pending before the Legislature as this bill).

46 “Local C-PACE program ordinance” means an ordinance adopted
47 by ²**[a]** an authorized² municipality ²or a county² , and approved by

1 the authority pursuant to section 7 of P.L. , c. (C.) (pending
2 before the Legislature as this bill), to establish a program within its
3 jurisdiction pursuant to subsection b. of section 5 and subsection a. of
4 section 6 of P.L. , c. (C.) (pending before the Legislature as this
5 bill).

6 “Microgrid” means a group of interconnected loads and distributed
7 energy resources within clearly defined electrical boundaries that acts
8 as a single controllable entity with respect to the electric distribution
9 system and that connects and disconnects from the electric distribution
10 system to enable it to operate when both connected to, or independent
11 of, the electric distribution system.

12 “Notice of assessment” means the document filed with the county
13 recording officer in the county in which ²[the] ²a² property is located,
14 ²[for a specific property that] which² notifies prospective holders of
15 an interest in the property that a C-PACE assessment lien has been
16 placed on the property.

17 “Opt-in ordinance” means an ordinance adopted by a municipality
18 by which it authorizes its participation in the Garden State C-PACE
19 program and authorizes the municipality to enter into ²[an
20 administration] a Garden State program² agreement with the authority.

21 “Participating municipality” means ²[a municipality that]² :

22 a. ²a municipality that² adopts an opt-in ordinance and executes
23 ²[an administration] a Garden State program² agreement; or

24 b. ²an authorized municipality that² adopts an opt-in ordinance,
25 executes ²[an administration] a Garden State program² agreement,
26 and adopts a local C-PACE program ordinance ²and local C-PACE
27 program guidelines approved by the authority² .

28 “Private entity” means a corporation, limited liability company,
29 partnership, trust, or any other form of private organization, including
30 but not limited to a “related competitive business segment of a public
31 utility holding company,” or a “related competitive business segment
32 of an electric public utility or gas public utility,” as those terms are
33 defined in section 3 of P.L.1999, c.23 (C.48:3-51), so long as the
34 organization is not subject to the jurisdiction of the Board of Public
35 Utilities.

36 “Program guidelines” means:

37 a. any program-related rules or documents, or both, ²[other than
38 the uniform assessment documents,]² prepared and published by the
39 authority that apply to the Garden State C-PACE program; or

40 b. any program-related rules or documents, or both, ²[other than
41 the uniform assessment documents,]² prepared and published by ²[a
42 participating] an authorized² municipality ²or a county, and approved
43 by the authority,² that apply to ²[its]² local C-PACE ²[program,]
44 programs² pursuant to ²paragraph (3) of² subsection ²[c.] b.² of
45 section ²[5] 6² of P.L. , c. (C.) (pending before the Legislature
46 as this bill).

1 “Project costs“ means costs associated with a C-PACE project and
2 shall include: direct costs, including but not limited to, equipment,
3 materials, and labor related to the purchasing, constructing, installing,
4 modifying, or acquiring a C-PACE project; indirect costs, including,
5 but not limited to, expenses and fees of engineers, architects, and other
6 professionals, inspection fees and permits, warranties and pre-paid
7 maintenance contracts; program fees; and financing costs of a capital
8 provider, including, but not limited to, origination fees, prepaid
9 interest and payment reserves, closing costs, counsel fees, trustee or
10 custodian fees, recording fees, and other financing charges ², except
11 that the authority may implement an alternative definition of “project
12 costs” in its program guidelines in connection with the financing of
13 new construction² .

14 “Property” means industrial, agricultural, or commercial property;
15 residential property containing five or more dwelling units; common
16 areas of condominiums and other planned real estate developments as
17 defined in section 3 of P.L.1977, c.419 (C.45:22A-23); and property
18 owned by a tax-exempt or nonprofit entity, including, but not limited
19 to, schools, hospitals, institutions of higher education, or religious
20 institutions, within a participating municipality upon which a C-PACE
21 assessment is imposed at the request of a property owner in connection
22 with a C-PACE project.

23 “Property owner” means ²[all of the owners] an owner² of a
24 property within a participating municipality who ²[consent] consents²
25 to a C-PACE assessment being imposed on the property ²[, as well as
26 the lessee of a property owned by a governmental entity or the lessee
27 under a ground lease on a property whose legal owner consents in
28 writing to a C-PACE assessment being imposed on the leasehold]² .

29 “Renewable energy system” means an improvement by which
30 electrical, mechanical, or thermal energy is produced from a method
31 that uses one or more of the following fuels or energy sources:
32 hydrogen, solar energy, geothermal energy, biomass, or wind energy,
33 together with the other fuels and energy sources that the authority,
34 after consultation with the Board of Public Utilities, may determine
35 pursuant to program guidelines prepared and published pursuant to
36 subsection c. of section 5 of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

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

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

42 ²“Transition renewable energy certificate” means a certificate
43 issued by the Board of Public Utilities or its designee, under the solar
44 energy transition incentive program, which is designed to transition
45 between the solar renewable energy certificate program and a solar
46 successor incentive program to be developed by the Board of Public
47 Utilities pursuant to P.L.2018, c.17 (C.48:3-87.8 et al.).²

1 “Uniform assessment documents” means a uniform C-PACE
2 assessment agreement, assignment agreement, and notice of
3 assessment, a model lender consent to a C-PACE assessment pursuant
4 to section 5 of P.L. , c. (C.) (pending before the Legislature as
5 this bill), and any other uniform or model documents prepared by the
6 authority and used in the Garden State C-PACE program and local C-
7 PACE programs, except that the authority shall not mandate a uniform
8 financing agreement, which shall be supplied by the capital provider
9 for direct financing.

10 “Water conservation improvement” means an improvement that
11 reduces water consumption, increases the efficiency of water use, or
12 reduces water loss.

13
14 3. (New section) a. ²(1)² No later than 18 months after the
15 ²[authority establishes the Garden State C-PACE program] launch
16 date² and annually thereafter, the authority shall prepare and submit to
17 the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
18 19.1), to the Legislature, a report describing the implementation and
19 operation of the Garden State C-PACE program ²[and any local C-
20 PACE programs]² , including information relating to any
21 administrative costs, the number of C-PACE projects, the location of
22 C-PACE projects, and the amount of financing issued for C-PACE
23 projects ²under the Garden State C-PACE program.

24 (2) No later than 18 months after an authorized municipality or a
25 county establishes a local C-PACE program pursuant to section 6 of
26 P.L. , c. (C.) (pending before the Legislature as this bill), and
27 annually thereafter, the municipality or county shall prepare and
28 submit to the Governor, the authority, and, pursuant to section 2 of
29 P.L.1991, c.164 (C.52:14-19.1), the Legislature, a report describing the
30 implementation and operation of its local C-PACE program, including
31 information relating to any administrative costs, the number of C-
32 PACE projects, the location of C-PACE projects, and the amount of
33 financing issued for C-PACE projects under its local C-PACE
34 program² .

35 b. ²(1)² No later than five years after the ²[authority establishes
36 the Garden State C-PACE program] launch date² , the authority shall
37 prepare and submit to the Governor and, pursuant to section 2 of
38 P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report that
39 reviews and assesses implementation of the Garden State C-PACE
40 program ²[and any local C-PACE programs]² . The report shall
41 evaluate the Garden State C-PACE program, including a review of
42 foreclosure rates and any other factors the authority deems appropriate.
43 The report may also identify and recommend legislative changes to
44 P.L. , c. (C.) (pending before the Legislature as this bill). ²The
45 report shall include an assessment of whether the costs incurred in
46 implementing the Garden State C-PACE Program are an effective
47 means of facilitating the financing of projects.

1 (2) No later than five years after an authorized municipality or a
2 county establishes a local C-PACE program pursuant to section 6 of
3 P.L. , c. (C.) (pending before the Legislature as this bill), the
4 municipality or county shall prepare and submit to the Governor, the
5 authority and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
6 the Legislature, a report that reviews and assesses implementation of
7 the local C-PACE program. The report shall evaluate its local C-
8 PACE program, including a review of foreclosure rates and any other
9 factors the authority deems appropriate. The report may also identify
10 and recommend legislative changes to P.L. , c. (C.) (pending
11 before the Legislature as this bill).²

12 c. The authority shall post all reports prepared ²by the authority²
13 pursuant to this section on its Internet website. ²Each authorized
14 municipality and each county that has established a local C-PACE
15 program shall post all reports prepared by it pursuant to this section on
16 its Internet website.²

17
18 4. (New section) a. The authority shall establish a Garden State
19 C-PACE program to facilitate the ²[direct]² financing of C-PACE
20 projects in municipalities that adopt an opt-in ordinance. The Garden
21 State C-PACE program shall consist of ²[, among other things,]² the
22 development of uniform assessment documents ²and program
23 guidelines² for the ²[direct]² financing of C-PACE projects to be
24 undertaken by property owners as local improvements and the
25 provision by ordinance ², subject to the approval of the authority,² for
26 a C-PACE assessment to be imposed on properties within the
27 municipality, if the owner of a property requests the C-PACE
28 assessment in order to undertake and finance a C-PACE project. C-
29 PACE projects on an individual property subject to the same C-PACE
30 assessment agreement collectively shall constitute a separate local
31 improvement and shall be assessed separately to the property owner
32 benefitted thereby.

33 b. The authority may contract with ², and set the compensation
34 of,² one or more third-party administrators ², whether private, public
35 or quasi-public, or for-profit or not-for-profit,² to assist the authority in
36 its implementation or administration, or a combination thereof, of the
37 Garden State C-PACE program pursuant to a competitive bidding
38 process. The authority may delegate any duties under the program to
39 one or more third-party administrators, provided that ²the² authority
40 shall not delegate its responsibility for general oversight of the Garden
41 State C-PACE program.

42 ²c. The authority may enter into a memorandum of agreement with
43 one or more State government agencies or instrumentalities whereby
44 any of the powers the authority may exercise or responsibilities it must
45 fulfill pursuant to P.L. , c. (C.) (pending before the
46 Legislature as this bill) may be exercised or fulfilled, as the case may
47 be, by such agency or instrumentality, and any fund that may be used

1 for administrative expenses by the authority may be used by such
2 agency or instrumentality in exercising such powers or fulfilling such
3 responsibilities.

4 d. The authority may establish a loss reserve, issue guarantees, or
5 both, to mitigate the repayment risk assumed by capital providers
6 providing direct financing, in order to improve the availability and
7 financial terms of such financing of C-PACE projects for property
8 owners.²

9
10 5. (New section) a. Within ²[180] ²270² days after the effective
11 date of P.L. , c. (C.) (pending before the Legislature as this
12 bill), the authority shall establish the Garden State C-PACE program
13 by publishing on its Internet website:

14 (1) uniform assessment documents;

15 (2) a model opt-in ordinance;

16 (3) Garden State C-PACE program guidelines ²adopted pursuant
17 to subsection c. of this section²; and

18 (4) ²a description of² the process by which a ²county or an
19 authorized² municipality applies to the authority for approval of a
20 local C-PACE program ordinance.

21 ²The Garden State C-PACE program shall not be operational and
22 available for the participation of capital providers, municipalities and
23 property owners until the authority has taken all of the actions required
24 by this subsection.²

25 b. The model opt-in ordinance, as well as any local C-PACE
26 program ordinance, shall prescribe ²a subset of the² criteria for
27 qualifying a C-PACE project for a C-PACE assessment ²[and shall
28 include] , including² the following ²[requirements]² :

29 (1) financing recipients shall be the legal or beneficial owners of
30 the property or duly authorized by the legal or beneficial owners of the
31 property, there shall be no defaults on any mortgage loans on the
32 subject property, all tax payments ², charges, and assessments² with
33 respect to the property shall be current, the legal or beneficial owners
34 of the property shall not be ²[not]² subject to any bankruptcy
35 proceeding, and the subject property shall not be ²[not]² the subject of
36 a bankruptcy proceeding;

37 (2) the ²[aggregate] principal² amount of ²[all] the² C-PACE
38 ²[assessments plus the outstanding balance due on all] assessment,
39 when combined with² mortgage ²[loans] and other lien obligations²
40 on a property shall not exceed ²[95] 90² percent of the ²appraised²
41 value of the property after including the value created by the C-PACE
42 project;

43 (3) ²[the determination of value of a property for purposes of
44 qualifying for a C-PACE assessment shall be based on of any of the
45 following:

46 (a) the value of the property as determined by the assessor;

1 (b) the market value of the property as estimated in a broker price
2 opinion or comparative market analysis by a real estate broker or
3 managing broker; or
4 (c) the as-complete or stabilized prospective market value of the
5 property as estimated in an appraisal report prepared or co-signed by a
6 licensed real estate appraiser within at least 24 months of the
7 application for financing;
8 ~~(4)~~² the maximum duration of a C-PACE assessment ², which
9 shall be determined pursuant to the provisions of paragraph (6) of
10 subsection c. of this section,² shall not exceed the weighted average
11 useful life of the improvements in the C-PACE project or 30 years,
12 whichever is less;
13 ~~[(5)]~~ ²(4)² the amount of ~~the~~² C-PACE assessment for a property
14 shall be a specific amount, and the terms of repayment of direct
15 financing shall be solely determined and negotiated between a
16 property owner and capital provider subject to the maximum duration
17 of an assessment in paragraph ~~[(4)]~~ ²(3)² of this subsection; and
18 ~~[(6)]~~ ²(5)² a property owner seeking a C-PACE assessment shall
19 receive written consent of the existing mortgage holders on the
20 property prior to the closing of the financing.
21 c. ²Pursuant to the purposes and objectives outlined in P.L. ,
22 c. (C.) (pending before the Legislature as this bill), and with
23 respect to the responsibilities of overseeing and implementing the
24 Garden State C-PACE program, the authority shall develop, in
25 consultation with the Division of Local Government Services in the
26 Department of Community Affairs, program guidelines governing the
27 terms and conditions under which financing may be made available
28 under the Garden State C-PACE program. Any amendments to the
29 Garden State C-PACE program guidelines shall require the approval
30 of the authority's board of directors.
31 Pursuant to the purposes and objectives outlined in P.L. ,
32 c. (C.) (pending before the Legislature as this bill), and with
33 respect to the responsibilities of overseeing and implementing a local
34 C-PACE program, a county or authorized municipality shall develop
35 program guidelines governing the terms and conditions under which
36 financing may be made available under the local C-PACE program.
37 The program guidelines, and any amendments thereto, for a local C-
38 PACE program shall be consistent with the Garden State C-PACE
39 program guidelines and the requirements set forth in P.L. ,
40 c. (C.) (pending before the Legislature as this bill) for C-
41 PACE projects and financing, and shall be subject to approval by the
42 authority pursuant to subsection a. of section 7 of P.L. ,
43 c. (C.) (pending before the Legislature as this bill).²
44 The Garden State C-PACE program guidelines and any local C-
45 PACE program guidelines ²**[authorized by resolution of the governing**
46 **body of a participating municipality]**² shall include, but not be limited,
47 to ²**[the following minimum procedures and requirements]**² :

- 1 (1) a uniform project application, uniform application
2 requirements, including uniform application documents; and the
3 procedures for a property owner to obtain approval of a C-PACE
4 project and a capital provider to finance a C-PACE project;
- 5 (2) minimum standards for a C-PACE project to qualify for C-
6 PACE financing;
- 7 (3) eligibility criteria for a property owner and property to qualify
8 for a C-PACE assessment; ²**[and]**²
- 9 (4) ²**[rules]** the underwriting criteria to be applied in determining
10 the eligibility of properties and their owners to participate in the
11 Garden State C-PACE program and local C-PACE programs and the
12 maximum permitted amount of a financing based on a property's value
13 and other characteristics;
- 14 (5) a requirement that all existing mortgage lien holders on a
15 property be given notice prior to a C-PACE assessment and lien being
16 filed in connection with that property, and that all property owners
17 receive consent of the existing mortgage holders on the property;
- 18 (6) a requirement that the term of a financing be no longer than the
19 forecast life of the improvements, which shall be calculated on a
20 blended average basis taking account of the relative values of the fixed
21 assets included in the C-PACE project, except that the authority may
22 establish alternative criteria for establishing the maximum term of a
23 financing for a C-PACE project that consists of new construction;
- 24 (7) within 90 days following the launch date with respect to the
25 Garden State C-PACE program guidelines only, supplemental program
26 guidelines² for refinancing projects completed prior to the submission
27 of a project application for a C-PACE assessment ²and for the use of
28 the Garden State C-PACE program in connection with the financing of
29 new construction upon previously unimproved real property² .
- 30 ¹**[The provisions of the Administrative Procedure Act, P.L.1968,**
31 **c.410 (C.52:14B-1 et seq.), shall not apply to the preparation,**
32 **publication, or implementation of the uniform assessment documents**
33 **or the program guidelines of the Garden State C-PACE program or a**
34 **local C-PACE program.]¹**
- 35 d. ²**[Upon recordation of the notice of assessment and C-PACE**
36 **assessment agreement in the land records of the property]** Subject to
37 the written consent of existing mortgage holders, the form of which
38 shall be determined by the authority in its uniform assessment
39 documents adopted pursuant to subsection a. of section 5 of P.L. ,
40 c. (C.) (pending before the Legislature as this bill)² , the C-
41 PACE assessment shall be a single, continuous first lien on the
42 property on and after the date of recordation ²[. The] of the C-PACE
43 assessment agreement. A property with delinquent taxes, charges, or
44 assessments shall not be eligible for a C-PACE assessment. Upon
45 recordation of the C-PACE assessment agreement in the land records
46 of the county in which the property is located,² the lien thereof shall be
47 perfected for all purposes in accordance with law, and the lien shall be

1 a continuous first lien upon the real estate described in the assessment,
2 paramount to all prior or subsequent alienations and descents of the
3 real estate or encumbrances thereon, except subsequent taxes,
4 charges, or assessments,² without any additional notice, recording,
5 filing, continuation filing, or action, until payment in full of the C-
6 PACE assessment, notwithstanding any mistake in the name or names
7 of any owner or owners, or any omission to name any owner or owners
8 who are unknown, and notwithstanding any lack of form therein, or in
9 any other proceeding which does not impair the substantial rights of
10 the owner or owners or other person or persons having a lien upon or
11 interest in any the real estate. Any confirmation of the amount of the
12 C-PACE assessment by the applicable municipality's² governing
13 body or by the a² court shall be considered as determining the
14 amount of the existing lien and not as establishing the lien. All C-
15 PACE assessments shall be presumed to have been regularly assessed
16 and confirmed and every assessment or proceeding preliminary thereto
17 shall be presumed to have been regularly made or conducted until the
18 contrary be shown.

19 e. A C-PACE assessment shall be treated as a municipal lien
20 rather than a contractual lien for all purposes of law.

21 f. Funds to finance a C-PACE project may be disbursed to, or for
22 the benefit of, the property owner at execution of the C-PACE
23 assessment agreement, or may be disbursed in installments over time.
24 The funds shall not constitute public funds, and shall not be subject to
25 the laws governing public funds, including, but not limited to, laws
26 regarding the receipt, expenditure, deposit, investment, or
27 appropriation of the same. Payments of the² C-PACE
28 assessments² assessment² shall commence as set forth in the C-
29 PACE assessment agreement. To the extent that upon completion of
30 the C-PACE project, funds remain that have not been disbursed to the
31 property owner, those funds on hand shall be used to reduce the
32 amount of the C-PACE assessment in accordance with the C-PACE
33 assessment agreement.

34 g. Except as provided in this subsection, if any payment of a C-
35 PACE assessment is not made within 10 days after the time² when
36 that payment shall have become due, or later, consistent with any
37 grace period provided or extended by a participating municipality for
38 the payment of property tax bills as may be permitted or required by
39 law², interest thereon shall be imposed at the same rate as may be
40 imposed upon unpaid property taxes in the participating municipality
41 [, and]. Notwithstanding any other provision of law, such statutory
42 interest shall be in addition to any accrued interest and any amount
43 fixed as a penalty for delinquency pursuant to the financing agreement
44 between the property owner and the capital provider. All such
45 amounts² shall be collected and enforced in the same manner as
46 unpaid property taxes, including by accelerated tax sale if the
47 participating municipality enforces collection of its unpaid property

1 taxes through accelerated tax sales. The proceeds of the sale shall also
2 pay the outstanding ²past unpaid amounts of the² C-PACE
3 ²**[assessments]** assessment² . However, the ²remaining² balance
4 ²**[due]** not delinquent² on a C-PACE assessment shall not be subject
5 to acceleration or extinguishment in the event of a default in payment.
6 ²Any statutory interest collected by the municipality on a delinquent
7 C-PACE assessment pursuant to this subsection shall be retained by
8 the municipality. Any accrued interest, or any amount fixed as a
9 penalty for delinquency, pursuant to the financing agreement between
10 the property owner and the capital provider shall be remitted to the
11 capital provider. If the property owner is delinquent on a C-PACE
12 assessment as well as delinquent on taxes, charges, or other
13 assessments, any payment shall be applied towards any and all such
14 other delinquencies before being applied to any delinquent C-PACE
15 assessment.² Notwithstanding any other provision of law, in the event
16 that any lien on the property shall be exposed to tax sale, pursuant to
17 the “tax sale law,” R.S.54:5-1 et seq., and ²**[any the lien]**² is struck off
18 and sold to the participating municipality, the C-PACE assessment
19 shall survive any subsequent action to foreclose the right of
20 redemption and continue as a first lien upon the real estate described in
21 the assessment, paramount to all prior or subsequent alienations and
22 descents of the real estate or encumbrances ²**[thereon]** , except
23 subsequent taxes, charges, or other assessments² , and provided that,
24 notwithstanding the obligations of a participating municipality
25 pursuant to section 1 of P.L.1942, c.54 (C.54:5- 53.1), while the
26 participating municipality holds the lien or owns the property, the
27 participating municipality shall not be responsible for or required to
28 make any payment ²from its treasury or any other source² in
29 furtherance of or to satisfy the C-PACE assessment. ²A municipality
30 shall not bear any other responsibility in furtherance or satisfaction of
31 a C-PACE assessment, except that a municipality may be compelled to
32 enforce a lien through an action to foreclose.² In the event of a taking
33 of the property by eminent domain or condemnation, the C-PACE
34 assessment may be accelerated or extinguished, at the election of the
35 capital provider, provided the capital provider is compensated ²in
36 accordance with the provisions of the “Eminent Domain Act of 1971,”
37 P.L.1971, c.361 (C.20:3-1 et seq.),² by the governmental entity
38 utilizing eminent domain or condemnation for the balance due on the
39 unpaid C-PACE assessment and any interest, penalties, or other
40 charges related thereto.

41 h. (1) C-PACE assessments shall be assigned directly by the
42 participating municipality, and any assignee thereof, as security for
43 financing from a capital provider to finance C-PACE projects.
44 Notwithstanding any law to the contrary, the assignment shall be an
45 absolute assignment of all of the participating municipality’s right,
46 title, and interest in and to the C-PACE assessment, except for its
47 obligations to bill, collect, remit, and enforce C-PACE assessments as

1 set forth in the assignment agreement. The proceeds of a C-PACE
2 assessment shall be considered “special revenues” owned by the
3 capital provider pursuant to chapter 9 of the federal bankruptcy code.

4 (2) C-PACE assessments assigned as provided hereunder shall not
5 be included in the general funds of the participating municipality, or be
6 subject to any laws regarding the receipt, deposit, investment, or
7 appropriation of public funds, and shall retain such status
8 notwithstanding enforcement of the assessment by the participating
9 municipality or assignee as provided herein. In the case of a
10 participating municipality that is otherwise subject to tax or revenue
11 sharing pursuant to law and which assigns C-PACE assessments as set
12 forth in this section, the C-PACE assessments shall not be considered
13 part of the tax or revenue sharing formula or calculation of municipal
14 revenues for the purpose of determining whether that participating
15 municipality is obligated to make payment to, or receive a credit from,
16 any tax sharing or revenue sharing pool. However, the redemption of
17 any delinquent and unpaid C-PACE assessments, including any
18 interest, penalties, or other charges related thereto, shall be paid no
19 later than on the first available tax bill after the property has been sold
20 after an action to foreclose the right of redemption.

21 i. The provisions of the Administrative Procedure Act, P.L.1968,
22 c.410 (C.52:14B-1 et seq.), shall not apply to the preparation,
23 publication, or implementation of the uniform assessment documents
24 or the program guidelines of the Garden State C-PACE program or a
25 local C-PACE program.

26
27 6. (New section) a. ²**[A]** An authorized² municipality that has
28 adopted an opt-in ordinance may also establish a local C-PACE
29 program to facilitate the financing of C-PACE projects in that
30 ²authorized² municipality. ²A county may also establish a local C-
31 PACE program pursuant to a local C-PACE program ordinance to
32 facilitate the financing of C-PACE projects in participating
33 municipalities located in that county that have adopted an opt-in
34 ordinance. A local C-PACE program ordinance adopted by a county
35 shall establish a program for the benefit of municipalities located
36 within the county, but participating municipalities shall remain
37 responsible for the process of levying, billing, collecting, remitting,
38 and enforcing the C-PACE assessment.² In a ²county or authorized²
39 municipality that has established a local C-PACE program pursuant to
40 a local C-PACE ¹**[Program]** program¹ ordinance, any C-PACE
41 projects in that ²authorized² municipality ²or, in the case of a county,
42 in any participating municipality located in that county that has
43 adopted an opt-in ordinance,² may be financed pursuant to the Garden
44 State C-PACE program or the local C-PACE program. In a
45 municipality that has not established ², or is located in a county that
46 has not established,² a local C-PACE program pursuant to a local C-

1 PACE program ordinance, any C-PACE projects in that municipality
2 may be financed pursuant to the Garden State C-PACE program only.

3 b. Notwithstanding the provisions of P.L.2011, c.187 (C.40:56-
4 1.4 et al.), or any other law, to the contrary, a ²county or authorized²
5 municipality seeking to establish and implement a local C-PACE
6 program shall adopt a local C-PACE program ordinance consistent
7 with this section and section 5 of P.L. , c. (C) (pending before
8 the Legislature as this bill). ²**[A]** An authorized² municipality may
9 establish a local C-PACE program through the adoption of a local C-
10 PACE program ordinance if the municipality has entered ²**[an**
11 **administration]** a Garden State program² agreement with the authority,
12 and obtained approval of the ordinance from the authority pursuant to
13 section 7 of P.L. , c. (C) (pending before the Legislature as this
14 bill). ²A county may establish a local C-PACE program through the
15 adoption of a local C-PACE program ordinance if the county has
16 obtained approval of the ordinance from the authority pursuant to
17 section 7 of P.L. , c. (C.) (pending before the Legislature as
18 this bill).²

19 In addition to prescribing criteria for qualifying a C-PACE project
20 for a C-PACE assessment pursuant to subsection b. of section 5 of
21 P.L. , c. (C.) (pending before the Legislature as this bill), ²**[the]**
22 a² local C-PACE program ordinance shall establish the following:

23 (1) A participating municipality ²or a county² may enter into an
24 agreement with a county improvement authority or it may, pursuant to
25 the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-
26 1 et seq.) enter into contracts with one or more private parties, to assist
27 the participating municipality ²or county² in its implementation and
28 administration, or a combination thereof, of the local C-PACE
29 program. The municipality ²or county² may delegate to one or more
30 private parties or a county improvement authority such matters as the
31 participating municipality determines ², except that it may not delegate
32 its reporting obligations pursuant to section 3 of P.L. , c. (C.)
33 (pending before the Legislature as this bill) or its obligation to ensure
34 that its local C-PACE program complies in all respects with P.L. ,
35 c. (C.) (pending before the Legislature as this bill) and its local
36 C-PACE program guidelines² .

37 (2) ²**[A participating]** An authorized² municipality ²or a county²
38 may, in addition to direct financing, offer financing of C-PACE
39 projects through the issuance of bonds pursuant to section 9 of P.L. ,
40 c. (C) (pending before the Legislature as this bill).

41 (3) ²**[A participating municipality shall,]** A local C-PACE
42 program shall not be operational and available for the participation of
43 capital providers and property owners until the authorized municipality
44 or county, as applicable,² by resolution of the governing body,
45 ²**[authorize the preparation of]** authorizes² local C-PACE program
46 guidelines pursuant to subsection c. of section 5 of

1 P.L. , c. (C) (pending before the Legislature as this bill) ²[prior
2 to closing a transaction on any C-PACE project under the local C-
3 PACE program.

4 c. A participating municipality shall submit to the authority an
5 annual report on its C-PACE financings] . The program guidelines for
6 any local C-PACE program shall be consistent with the Garden State
7 C-PACE program guidelines and the requirements set forth in P.L. ,
8 c. (C.) (pending before the Legislature as this bill) for C-
9 PACE projects and financing, and shall be subject to approval by the
10 authority pursuant to subsection a. of section 7 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill). In
12 addition, such program guidelines may include supplemental
13 provisions, provided that they are not inconsistent with the Garden
14 State C-PACE program guidelines and the requirements set forth in
15 P.L. , c. (C.) (pending before the Legislature as this bill)² .
16

17 7. (New section) a. ²[A] An authorized² municipality ²or
18 county² seeking to establish a local C-PACE program pursuant to
19 section 6 of P.L. , c. (C.) (pending before the Legislature as
20 this bill) shall submit an application to the authority for approval.
21 The application to the authority shall consist of the following:

22 (1) a proposed local C-PACE program ordinance consistent with
23 subsection b. of section 5 of P.L. , c. (C.) (pending before the
24 Legislature as this bill); ²[and]²

25 (2) acknowledgement that the ²authorized² municipality ²or, in
26 the case of a local C-PACE program established by a county, any
27 participating municipality located in that county,² shall use the
28 uniform assessment documents prepared by the authority ²; and

29 (3) the authorized municipality's or county's proposed program
30 guidelines² .

31 b. (1) The authority's review of a ²county's or authorized²
32 municipality's application shall be limited to confirming that it
33 contains the items required by section 5 of P.L. , c. (C.)
34 (pending before the Legislature as this bill) and is otherwise
35 ²[consistent with] in compliance with the provisions of² P.L. , c.
36 (C.) (pending before the Legislature as this bill). Within ²[30]
37 60² days after receipt of the application, the authority shall either
38 approve or reject the ²[municipality's]² application. If the
39 authority does not act within ²[30] 60² days ²[of] after² receipt,
40 the application shall be deemed approved.

41 (2) If the authority approves the application, or the application
42 is deemed approved in accordance with paragraph (1) of this
43 subsection, the ²county or authorized² municipality may adopt the
44 proposed ordinance establishing a local C-PACE program.

45 (3) If the authority disapproves the application, it shall provide a
46 detailed explanation to the ²county or authorized² municipality as to

1 the reasons for the disapproval and the changes necessary to bring
2 the proposed local C-PACE program ordinance ², local C-PACE
3 program guidelines, and other elements of the proposed local C-
4 PACE program² into compliance with the requirements of P.L. , c.
5 (C.) (pending before the Legislature as this bill). The ²county or
6 authorized² municipality shall not adopt the proposed local C-
7 PACE program ordinance if the authority disapproves the
8 application, but the ²county or authorized² municipality may submit
9 a revised or new application.

10 c. The authority ²shall have no role in a participating **】** may
11 monitor and oversee a county's or authorized² municipality's local
12 C-PACE program ²**【** except for review and approval of its
13 application pursuant to subsections a. and b. of this section and the
14 collection of information regarding any C-PACE projects
15 undertaken by a local C-PACE program pursuant to subsection a. of
16 section 3 of P.L. , c. (C.) (pending before the Legislature as
17 this bill)】 to the extent it deems necessary to ensure the continuing
18 compliance of the local C-PACE program with the requirements of
19 P.L. , c. (C.) (pending before the Legislature as this bill).
20 The authority's discretionary monitoring and overseeing role
21 pursuant to this subsection shall not include the review and
22 approval of C-PACE project applications that are submitted to a
23 local C-PACE program. The authority shall review and approve C-
24 PACE project applications that are submitted to the Garden State C-
25 PACE program, but only an authorized municipality or county that
26 has established a local C-PACE program pursuant to P.L. ,
27 c. (C.) (pending before the Legislature as this bill) may review
28 and approve C-PACE project applications that are submitted to a
29 local C-PACE program.

30 In the event that an authorized municipality or county desires to
31 revise or amend its program guidelines in any other manner, such
32 proposed revisions or amendments shall first be submitted to the
33 authority for its review and approval before the revisions or
34 amendments become effective.

35 A participating municipality or a county with a local C-PACE
36 program shall incorporate into its local C-PACE program guidelines
37 any revision or amendment made by the authority to the Garden
38 State C-PACE program guidelines immediately upon the
39 publication of the revision or amendment on the authority's
40 website, unless the authority expressly provides otherwise, based
41 upon a determination that the revision or amendment does not apply
42 to local C-PACE programs. Any such revisions or amendments
43 made by the authority to the Garden State C-PACE program
44 guidelines or incorporated into local C-PACE program guidelines
45 shall not apply retroactively to C-PACE projects that were
46 previously approved pursuant to the Garden State C-PACE program
47 or local C-PACE programs² .

1 8. (New section) a. The authority may charge a ²county or
2 authorized² municipality a fee to review a proposed local C-PACE
3 program ordinance ²or local C-PACE program guidelines² . The fee
4 shall reflect the reasonable and actual cost of the review, provided that
5 the fee shall be a one-time charge not to exceed \$5,000.

6 b. The authority may charge the property owner a fee for the
7 review of an application for a C-PACE project in the Garden State C-
8 PACE program ²]. The fee, inclusive of any fee to compensate a
9 third-party administrator, shall be a one-time fee that shall not exceed
10 one percent of the amount financed, provided that the fee shall not
11 exceed \$75,000.

12 c. A participating municipality may charge the property owner a
13 fee for the review of an application for direct financing in a local C-
14 PACE program. The fee ¹, inclusive of any fee to compensate a third-
15 party administrator,¹ shall reflect the reasonable and actual cost of the
16 review and shall be a one-time fee not to exceed one percent of the
17 amount financed, provided that the fee shall not exceed \$75,000.

18 d. and for its fulfillment of such obligations, if any, that the
19 authority may undertake to serve as an intermediary in the remittance
20 of C-PACE assessments to capital providers if requested by the
21 participating municipality. The fee shall reflect the reasonable and
22 actual costs of the review or fulfillment of any obligations that the
23 authority may undertake.

24 c.² A participating municipality may charge the property owner an
25 annual fee for the billing, collecting, and remitting of ²[the installment
26 payments on]² the C-PACE assessment. The fee ²[, inclusive of any
27 fee to compensate a third-party administrator,]² shall reflect the
28 reasonable and actual cost of the billing, collecting, and remitting
29 ²[and, shall be an annual charge not to exceed one-tenth of one
30 percent]² of the annual ²amounts due for the² C-PACE assessment
31 ²[amount due]² .

32

33 9. (New section) a. Financing for the implementation of C-
34 PACE projects, including the refinancing of an investment in an
35 existing improvement that qualifies as a C-PACE project, provided the
36 existing improvement was completed no more than three years prior to
37 the submission of an application to the Garden State C-PACE program
38 or local C-PACE program for the financing, shall be made available to
39 property owners in exchange for a C-PACE assessment on the
40 property. The C-PACE assessment shall be used to repay the
41 financing.

42 b. The governing body of a ²[participating] county or
43 authorized² municipality may apply to a county improvement
44 authority that issues bonds pursuant to paragraph (3) of subsection (j)
45 of section 12 of P.L.1960, c.183 (C.40:37A-55), or ², in the case of an
46 authorized municipality,² may issue bonds on its own to finance

1 ²**[the]** project costs for C-PACE projects pursuant to a local C-PACE
2 program or the Garden State C-PACE² program.

3 (1) Notwithstanding any other law to the contrary, bonds issued by
4 a participating municipality shall be authorized and issued by
5 ordinance of the municipality, may be issued in one or more series on
6 such additional terms, and may be sold at public or private sale, all as
7 set forth in the ordinance.

8 (2) Bonds issued by a county improvement authority shall be
9 authorized and issued in the manner set forth in the “county
10 improvement authorities law,” P.L.1960, c.183 (C.40:37A-44 et seq.).

11 (3) Bonds issued by a participating municipality or county
12 improvement authority shall be non-recourse obligations of the issuer
13 and shall not be considered to be direct and general obligations of the
14 issuer, or the State of New Jersey or any political subdivision thereof.
15 Any bonds issued or authorized by a municipality pursuant to P.L. ,
16 c. (C.) (pending before the Legislature as this bill) shall not be
17 considered gross debt of the municipality on any debt statement filed
18 in accordance with the “Local Bond Law,” N.J.S. 40A:2-1 et seq.

19 (4) Bonds issued by a municipality or county improvement
20 authority pursuant to this subsection may be backed by one or more C-
21 PACE assessment contracts.

22 c. The authority shall allow capital providers to directly finance
23 ²project costs for² C-PACE projects ², or for such costs to be financed
24 through bond issuance² . Any direct financing provided by a capital
25 provider pursuant to P.L. , c. (C.) (pending before the
26 Legislature as this bill) shall not be guaranteed or secured by the full
27 faith and credit of any public entity, including the State of New Jersey
28 or any political subdivision thereof, shall not be considered to be direct
29 and general obligations of any public entity, including the State of
30 New Jersey or any political subdivision thereof, shall not be
31 considered gross debt of any municipality on any debt statement filed
32 in accordance with the “Local Bond Law,” N.J.S.40A:2-1 et seq., and
33 shall not be considered “financial assistance” pursuant to section 1 of
34 P.L.1979, c.303 (C.34:1B-5.1) ², except to the extent the authority may
35 provide a guaranty as provided for in subsection d. of section 4 of
36 P.L. , c. (C.) (pending before the Legislature as this bill)² .
37 The Garden State C-PACE program ²and any local C-PACE program²
38 shall ²[not limit C-PACE financing to a single private capital
39 provider] permit all capital providers that meet the eligibility
40 requirements established in their program guidelines to provide
41 financing through the program² .

42 d. ²**[A municipality, county improvement authority, or private**
43 **entity authorized to implement or administer, or a combination**
44 **thereof,] An authorized municipality or county that has established² a**
45 **local C-PACE program shall allow capital providers to directly finance**
46 **project costs for² C-PACE projects ²under the program² . ²[Any**
47 **direct] The repayment of any² financing provided by a capital**

1 provider shall not be guaranteed or secured by the full faith and credit
2 of any public entity, including the State of New Jersey or any political
3 subdivision thereof, shall not be considered to be direct and general
4 obligations of any public entity, including the State of New Jersey or
5 any political subdivision thereof, shall not be considered gross debt of
6 any municipality on any debt statement filed in accordance with the
7 “Local Bond Law,” N.J.S.40A:2-1 et seq., and shall not be considered
8 “financial assistance” ²[N.J.S. 34:1B-5.1. A local C-PACE program
9 shall not limit C-PACE financing to a single private capital provider.
10 The C-PACE assessment, lien and assignment agreement apply to
11 direct financing from a capital provider] pursuant to section 1 of
12 P.L.1979, c.303 (C.34:1B-5.1), except to the extent the authority may
13 provide a guaranty as provided for in subsection d. of section 4 of
14 P.L. , c. (C.) (pending before the Legislature as this bill)² .

15 e. A property owner who installs a renewable energy system
16 under the Garden State C-PACE program or a local C-PACE program
17 may also assign or transfer any solar renewable energy certificates ²,
18 transition renewable energy certificates,² or other renewable energy
19 certificates or credits that accrue to the property owner from the
20 operation of the system to the authority, the municipality, the county
21 improvement authority, other public entity, or the private entity, or
22 capital provider as applicable, which has financed the C-PACE
23 project. If any solar renewable energy certificates ², transition
24 renewable energy certificates,² or other renewable energy certificates
25 or credits are assigned or transferred to a municipality, county, county
26 improvement authority, other public entity, or private entity, the
27 municipality, county, county improvement authority, other public
28 entity, or private entity, or capital provider is authorized to sell, grant,
29 assign, convey, or otherwise dispose of its interest in the certificates or
30 credits to repay the financing.

31 ²f. Other than as identified in this section, no public entity,
32 including the State of New Jersey or any political subdivision thereof,
33 may issue bonds to finance any C-PACE program, except to the extent
34 the authority may issue bonds pursuant to P.L.1974, c.80 (C.34:1B-1
35 et seq.).²

36
37 ²[10. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to
38 read as follows:

39 1. a. Upon application to and approval by the Director of
40 Local Government Services in the Department of Community
41 Affairs, the governing body of a municipality may undertake the
42 financing of the purchase and installation of renewable energy
43 systems and energy efficiency improvements by property owners as
44 a local improvement and may provide by ordinance for a “clean
45 energy special assessment” to be imposed on a property within the
46 municipality, if the owner of the property requests the assessment in
47 order to install the systems or improvements. Each improvement on

1 an individual property shall constitute a separate local improvement
2 and shall be assessed separately to the property owner benefitted
3 thereby. The clean energy special assessment shall be payable in
4 quarterly installments. The terms of the clean energy special
5 assessment shall be in accordance with the terms of the financing
6 provided by the municipality pursuant to section 2 of P.L.2011,
7 c.187 (C.40:56-13.1).

8 b. Notwithstanding the provisions of subsection a. of this
9 section to the contrary, the Director of Local Government Services
10 in the Department of Community Affairs shall not accept, and a
11 municipality shall not submit, an application to undertake the
12 financing of the purchase and installation of renewable energy
13 systems and energy efficiency improvements by property owners as
14 a local improvement pursuant to the provisions of P.L.2011, c.187
15 (C.40:56-1.4 et al.) after the date the Economic Development
16 Authority has published on its Internet website all the items
17 pursuant to subsection a. of section 5 of P.L. , c. (C.) (pending
18 before the Legislature at this bill). The Director of Local
19 Government Services in the Department of Community Affairs
20 shall continue to process any application submitted prior to that
21 date, and a municipality shall continue its undertaking approved
22 prior to that date and any undertaking for which an application was
23 pending on that date that is approved on or after that date.

24 c. All actions taken by the Director of Local Government
25 Services in the Department of Community Affairs or any
26 municipality pursuant to the provisions of this section shall be
27 unaffected by the enactment of P.L. , c. (C.) (pending before
28 the Legislature as this bill).

29 (cf: P.L.2011, c.187, s.1)]²

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

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

1 b. Notwithstanding the provisions of subsection a. of this section
2 to the contrary, the Director of Local Government Services in the
3 Department of Community Affairs shall not accept, and a municipality
4 shall not submit, an application to undertake the financing of the
5 purchase and installation of renewable energy systems and energy
6 efficiency improvements by property owners as a local improvement
7 pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after
8 the date the Economic Development Authority has published on its
9 Internet website all the items pursuant to subsection a. of section 5 of
10 P.L. , c. (C.) (pending before the Legislature at this bill). The
11 Director of Local Government Services in the Department of
12 Community Affairs shall continue to process any application
13 submitted prior to that date, and a municipality shall continue its
14 undertaking approved prior to that date and any undertaking for which
15 an application was pending on that date that is approved on or after
16 that date.

17 c. All actions taken by the Director of Local Government
18 Services in the Department of Community Affairs or any municipality
19 pursuant to the provisions of this section shall be unaffected by the
20 enactment of P.L. , c. (C.) (pending before the Legislature as this
21 bill).²

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

23

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

26 2. a. (1) Upon application to and approval by the Director of
27 Local Government Services in the Department of Community Affairs,
28 a municipality may adopt an ordinance to establish a program to
29 finance the purchase and installation of renewable energy systems and
30 energy efficiency improvements by property owners and to authorize
31 the issuance at public or private sale of non-recourse bonds as further
32 provided herein. The governing body may apply to a county
33 improvement authority that issues bonds pursuant to paragraph (2) of
34 subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may
35 issue bonds to finance the program pursuant to section 3 of P.L.2011,
36 c.187 (C.40:56-13.2). Funds for the purchase and installation of
37 renewable energy systems and energy efficiency improvements shall
38 be loaned to property owners in exchange for a clean energy special
39 assessment on the property pursuant to section 1 of P.L.2011, c.187
40 (C.40:56-1.4), to be paid quarterly. In the case of financing provided
41 by bonds issued by a county improvement authority, the clean energy
42 special assessment shall be used to repay the bonds. The bonds issued
43 by a county improvement authority pursuant to this section shall be
44 issued as non-recourse obligations of the authority and shall not be
45 considered to be direct and general obligations of the authority. In the
46 case of financing provided by the municipality through the issuance of
47 municipal bonds, the clean energy special assessment shall be used to
48 repay the bonds. The bonds issued by a municipality pursuant to this

1 section shall be issued as non-recourse obligations of the municipality
 2 and shall not be considered to be direct and general obligations of the
 3 municipality. Any bonds issued or authorized by a municipality
 4 pursuant to this section shall not be considered gross debt of the
 5 municipality on any debt statement filed in accordance with the “Local
 6 Bond Law,” N.J.S.40A:2-1 et seq. A property owner who purchases
 7 and installs a renewable energy system under the program may also
 8 assign any solar renewable energy certificates ², transition renewable
 9 energy certificates,² or other renewable energy credits that accrue to
 10 the property owner from the operation of the system to the
 11 municipality or the county improvement authority to repay the loan for
 12 the system. The Director of Local Government Services in the
 13 Department of Community Affairs shall coordinate efforts with the
 14 Board of Public Utilities to ensure that the amount of financing made
 15 available by local programs authorized pursuant to this act is in
 16 accordance with limits set from time to time by the Board of Public
 17 Utilities in order to ensure that local programs further the goals of the
 18 Office of Clean Energy in the Board of Public Utilities.

19 (2) Notwithstanding the provisions of paragraph (1) of this
 20 subsection to the contrary, the Director of Local Government Services
 21 in the Department of Community Affairs shall not accept and a
 22 municipality shall not submit an application for approval of an
 23 ordinance to establish a program to finance the purchase and
 24 installation of renewable energy systems and energy efficiency
 25 improvements by property owners pursuant to the provisions of
 26 P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic
 27 Development Authority has published on its Internet website all of the
 28 items pursuant to subsection a. of section 5 of P.L. , c. (C.)
 29 (pending before the Legislature at this bill). The Director of Local
 30 Government Services in the Department of Community Affairs shall
 31 continue to process any application submitted prior to that date, and a
 32 municipality shall adopt any ordinance approved prior to that date and
 33 any ordinance for which an application was pending on that date that is
 34 approved on or after that date.

35 (3) All actions taken by the Director of Local Government
 36 Services in the Department of Community Affairs or any municipality
 37 pursuant to the provisions of this section shall be unaffected by the
 38 enactment of P.L. , c. (C.) (pending before the Legislature as this
 39 bill).

40 b. As used in this section ²[, “solar”] :

41 “Solar² renewable energy certificate” shall have the same meaning
 42 as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

43 ²“Transition renewable energy certificate” shall have the same
 44 meaning as set forth in section 2 of P.L. , c. (C.) (pending
 45 before the Legislature as this bill).²

46 (cf: P.L.2019, c.335, s.4)

1 12. 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.

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

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

20 d. Notwithstanding the provisions of this section to the
21 contrary, the Director of Local Government Services in the
22 Department of Community Affairs shall not accept, and the
23 governing body of a municipality shall not submit an application
24 pursuant to subsection a. of this section after the date the Economic
25 Development Authority has published on its Internet website all of
26 the items pursuant to subsection a. of section 5 of P.L. , c. (C.)
27 (pending before the Legislature at this bill). The Director of Local
28 Government Services in the Department of Community Affairs or a
29 municipality shall continue to process any application submitted
30 prior to that date, and an application approved by a municipality
31 prior to that date shall be implemented.

32 e. All actions taken by the Director of Local Government
33 Services in the Department of Community Affairs or any
34 municipality pursuant to the provisions of this section shall be
35 unaffected by the enactment of P.L. , c. (C.) (pending before
36 the Legislature as this bill).

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

38

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

41 11. The purposes of every authority shall be (a) provision within
42 the county or any beneficiary county of public facilities for use by the
43 State, the county or any beneficiary county, or any municipality in any
44 such county, or any two or more or any subdivisions, departments,
45 agencies or instrumentalities of any of the foregoing for any of their
46 respective governmental purposes, (b) provision within the county or
47 any beneficiary county of public facilities for use as convention halls,
48 or the rehabilitation, improvement or enlargement of any convention

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

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

33 b. In a fiscal year in which a public health emergency, pursuant to
34 the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et
35 seq.), a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-
36 33 et seq.), or both has been declared by the Governor in response to
37 COVID-19 and during the next following fiscal year, a county
38 improvement authority shall also have as its purpose the pooling of
39 special emergency notes issued by the county or any beneficiary
40 county, or by any local governmental unit within the county or any
41 beneficiary county, pursuant to N.J.S.40A:4-55 for purposes of
42 financing a special emergency appropriation authorized for the
43 purpose set forth in subsections l. and m. of N.J.S.40A:4-53.
44 (cf: P.L.2020, c.74, s.8)

45
46 14. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to
47 read as follows:

- 1 12. Every authority shall be a public body politic and corporate
2 constituting a political subdivision of the State established as an
3 instrumentality exercising public and essential governmental
4 functions to provide for the public convenience, benefit and welfare
5 and shall have perpetual succession and, for the effectuation of its
6 purposes, have the following additional powers:
- 7 (a) To adopt and have a common seal and to alter the same at
8 pleasure;
- 9 (b) To sue and be sued;
- 10 (c) To acquire, hold, use and dispose of its facility charges and
11 other revenues and other moneys;
- 12 (d) To acquire, rent, hold, use and dispose of other personal
13 property for the purposes of the authority;
- 14 (e) Subject to the provisions of section 26 of this act, to acquire
15 by purchase, gift, condemnation or otherwise, or lease as lessee,
16 real property and easements or interests therein necessary or useful
17 and convenient for the purposes of the authority, whether subject to
18 mortgages, deeds of trust or other liens or otherwise, and to hold
19 and to use the same, and to dispose of property so acquired no
20 longer necessary for the purposes of the authority; provided that the
21 authority may dispose of such property at any time to any
22 governmental unit or person if the authority shall receive a
23 leasehold interest in the property for such term as the authority
24 deems appropriate to fulfill its purposes;
- 25 (f) Subject to the provisions of section 13 of this act, to lease to
26 any governmental unit or person, all or any part of any public
27 facility for such consideration and for such period or periods of
28 time and upon such other terms and conditions as it may fix and
29 agree upon;
- 30 (g) To enter into agreements to lease, as lessee, public facilities
31 for such term and under such conditions as the authority may deem
32 necessary and desirable to fulfill its purposes, and to agree,
33 pursuant thereto, to be unconditionally obligated to make payments
34 for the term of the lease, without set-off or counterclaim, whether or
35 not the public facility is completed, operating or operable, and
36 notwithstanding the destruction of, damage to, or suspension,
37 interruption, interference, reduction or curtailment of the
38 availability or output of the public facility to which the agreement
39 applies;
- 40 (h) To extend credit or make loans to any governmental unit or
41 person for the planning, design, acquisition, construction, equipping
42 and furnishing of a public facility, upon the terms and conditions
43 that the loans be secured by loan and security agreements,
44 mortgages, leases and other instruments, the payments on which
45 shall be sufficient to pay the principal of and interest on any bonds
46 issued for the purpose by the authority, and upon such other terms
47 and conditions as the authority shall deem reasonable;

- 1 (i) Subject to the provisions of section 13 of this act, to make
2 agreements of any kind with any governmental unit or person for
3 the use or operation of all or any part of any public facility for such
4 consideration and for such period or periods of time and upon such
5 other terms and conditions as it may fix and agree upon;
- 6 (j) (1) To borrow money and issue negotiable bonds or notes or
7 other obligations and provide for and secure the payment of any
8 bonds and the rights of the holders thereof, and to purchase, hold
9 and dispose of any bonds;
- 10 (2) To issue bonds, notes or other obligations to provide funding
11 to a municipality that finances the purchase and installation of
12 renewable energy systems and energy efficiency improvements by
13 property owners as provided in section 2 of P.L.2011, c.187
14 (C.40:56-13.1);
- 15 (3) To issue bonds, notes, or other obligations to finance a C-
16 PACE project for a local C-PACE program pursuant to section 9 of
17 P.L. , c. (C.) (pending before the Legislature as this bill);
- 18 (k) To apply for and to accept gifts or grants of real or personal
19 property, money, material, labor or supplies for the purposes of the
20 authority from any governmental unit or person, and to make and
21 perform agreements and contracts and to do any and all things
22 necessary or useful and convenient in connection with the
23 procuring, acceptance or disposition of such gifts or grants;
- 24 (l) To determine the location, type and character of any public
25 facility and all other matters in connection with all or any part of
26 any public facility which it is authorized to own, construct,
27 establish, effectuate or control;
- 28 (m) To make and enforce bylaws or rules and regulations for the
29 management and regulation of its business and affairs and for the
30 use, maintenance and operation of any public facility, and to amend
31 the same;
- 32 (n) To do and perform any acts and things authorized by this act
33 under, through or by means of its own officers, agents and
34 employees, or by contract with any governmental unit or person;
- 35 (o) To acquire, purchase, construct, lease, operate, maintain and
36 undertake any project and to fix and collect facility charges for the
37 use thereof;
- 38 (p) To mortgage, pledge or assign or otherwise encumber all or
39 any portion of its revenues and other income, real and personal
40 property, projects and facilities for the purpose of securing its
41 bonds, notes and other obligations or otherwise in furtherance of the
42 purpose of this act;
- 43 (q) To extend credit or make loans to redevelopers for the
44 planning, designing, acquiring, constructing, reconstructing,
45 improving, equipping and furnishing any redevelopment project or
46 redevelopment work;
- 47 (r) To conduct examinations and investigations, hear testimony
48 and take proof, under oath at public or private hearings of any

1 material matter, require the attendance of witnesses and the
2 production of books and papers and issue commissions for the
3 examination of witnesses who are out of the State, unable to attend,
4 or excused from attendance;

5 (s) To authorize a committee designated by it consisting of one
6 or more members, or counsel, or any officer or employee to conduct
7 any such investigation or examination, in which case such
8 committee, counsel, officer or employee shall have power to
9 administer oaths, take affidavits and issue ~~subpenas~~ subpoenas or
10 commissions;

11 (t) To enter into any and all agreements or contracts, execute
12 any and all instruments, and do and perform any and all acts or
13 things necessary, convenient or desirable for the purposes of the
14 authority or to carry out any power expressly given in this act
15 subject to the “Local Public Contracts Law,” P.L.1971, c.198
16 (C.40A:11-1 et seq.);

17 (u) To pool loans for any local governmental units within the
18 county or any beneficiary county that are refunding bonds and do
19 and perform any and all acts or things necessary, convenient or
20 desirable for the purpose of the authority to achieve more favorable
21 interest rates and terms for those local governmental units; and

22 (v) To act as and exercise the powers of a land bank entity
23 pursuant to P.L.2019, c.159 (C.40A:12A-74 et al.) for any
24 municipality situated within the county pursuant to a land banking
25 agreement approved by an ordinance adopted by the municipal
26 governing body.

27 (cf: P.L.2019, c.159, s.17)

28

29 15. This act shall take effect immediately, except that neither the
30 Garden State C-PACE program nor any local C-PACE program
31 established pursuant to P.L. , c. (C.) (pending before the
32 Legislature as this bill) shall be operable until the authority has
33 published on its Internet website all of items required pursuant to
34 subsection a. of section 5 of P.L. , c. (C.) (pending before the
35 Legislature as this bill).