

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2374**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2021

The Senate Budget and Appropriations Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 2374 (2R), with committee amendments.

This bill, as amended by the committee, would require the New Jersey Economic Development Authority (EDA) to establish a Garden State C-PACE program to facilitate the financing of C-PACE projects.

“C-PACE” is the acronym for the term “commercial property assessed clean energy.” As defined in the bill, “C-PACE project” means: (1) the acquisition, construction, capital lease, installation, or modification of an energy efficiency improvement, renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of such improvements, within a participating municipality; (2) a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or (3) a power purchase agreement with respect to a renewable energy system affixed to a property. As used in the bill, “property” means: industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments; and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions.

The bill would require the EDA, as part of the Garden State C-PACE program, to develop uniform assessment documents and program guidelines for the financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project.

The C-PACE assessment would be used to repay the financing for the C-PACE project and would constitute a single, continuous first lien on the property. It would be treated as a municipal lien for all purposes of law. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

Within 270 days after the bill is enacted into law, the EDA would be required to establish the Garden State C-PACE program by publishing on its Internet website: (1) uniform assessment documents; (2) a model opt-in ordinance; (3) program guidelines; and (4) the process by which a county or an "authorized municipality" – defined by the bill as municipalities in the top third in the State, in terms of population – would apply to the EDA for approval of a local C-PACE program ordinance. The bill provides that the EDA may contract with one or more third-party administrators to assist in the implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. However, the EDA may not delegate its responsibility for general oversight of the program.

Section 5 of the bill sets forth requirements for the model opt-in ordinance, as well as any local C-PACE program ordinance. Section 5 of the bill also specifies certain minimum procedures and requirements to be included in the Garden State C-PACE program guidelines (to be developed by the EDA) and any local C-PACE program guidelines (to be developed by a county or authorized municipality). The bill also sets forth requirements and procedures concerning the disbursement of funds for financing of C-PACE projects, and the payment and assignment of C-PACE assessments.

Section 6 of the bill provides that a county or authorized municipality may adopt an ordinance to establish a local C-PACE program to facilitate the financing of C-PACE projects in that county or municipality. In a county or authorized municipality that has established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that authorized municipality or, in the case of a county, in any participating municipality located in that county that has adopted an opt-in ordinance, may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established, or is located in a county that has not established, a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only. A county or authorized municipality seeking to establish a local C-PACE program would be required to submit an application to the EDA for approval pursuant to section 7 of the bill.

Section 8 of the bill would authorize the EDA to charge a county or authorized municipality a fee to review a proposed local C-PACE program ordinance or program guidelines, and would authorize the EDA and participating municipalities to charge property owners a fee for the review of an application for a C-PACE project. In addition, a participating municipality may charge a property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment.

Section 9 of the bill would authorize financing and refinancing for the implementation of C-PACE projects for property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment would be used to repay the financing. The bill authorizes a county or authorized municipality to apply to a county improvement authority that issues bonds, or may issue bonds on its own, to finance the program. Section 9 of the bill also authorizes capital providers to directly finance C-PACE projects, including through the issuance of bonds.

No later than 18 months after the EDA establishes the Garden State C-PACE program and annually thereafter, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report describing the implementation and operation of the Garden State C-PACE program. In addition, no later than five years after the EDA establishes the Garden State C-PACE program, the EDA would be required to prepare and submit, to the Governor and the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program, including a review of foreclosure rates and any other factors the EDA deems appropriate. The bill would also establish analogous reporting requirements for counties and authorized municipalities that develop local C-PACE programs.

Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the governing body of a municipality, upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, may undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners. By ordinance, the municipality may provide for a “clean energy special assessment” to be imposed on those properties when the property owner has requested the assessment in exchange for receiving assistance with the initial financing. Under current law, the only projects eligible for this program are installations of renewable energy systems and energy efficiency improvements. This bill would prohibit the Director of the Division of Local Government Services from approving applications from municipalities pursuant to P.L.2011, c.187 after the date the EDA publishes the information required by this bill to establish the Garden State C-PACE Program.

Lastly, the bill would amend the “county improvement authorities law” to add to the purposes of a county improvement authority the implementation and administration, or a combination thereof, of a local C-PACE program and the authority to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to the bill.

As amended, this bill is identical to Senate Bill No. 1953 (SCS/1R) which was also reported favorably, with amendments, by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments to the bill would:

(1) clarify that a county improvement authority would be authorized by the bill to issue bonds to finance a C-PACE project under the Garden State C-PACE program (as well as local C-PACE programs); and

(2) make other clarifying changes to the bill’s language.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates the bill will increase annual State expenditures due to administering the Garden State C-PACE program, which would finance Property Assessed Clean Energy (PACE) projects, including commercial properties (C-PACE), undertaken by participating property owners.

Under the bill, the New Jersey Economic Development Authority (EDA) would be required to establish the C-PACE program, provide general oversight of the program, and submit a report on the program no later than five years after its establishment. As a result, the bill will impose additional administrative costs on the EDA.

To potentially recoup some of these administrative costs, the bill authorizes the EDA to charge a county or authorized municipality (top third of municipalities in the State in terms of population) a one-time fee, not to exceed \$5,000, to review the proposed C-PACE program ordinance. The EDA may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program and for its fulfillment of such obligations, if any, that the EDA may undertake to serve as an intermediary in the remittance of C-PACE assessments to capital providers if requested by the authorized municipality. The fee would reflect the reasonable and actual costs of the review or fulfillment of any obligations that the authority may undertake. An authorized municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the C-PACE assessment and would reflect the reasonable and actual cost of the amounts due for the C-PACE assessment.

The bill also permits an authorized municipality to enter into agreement with a county improvement authority or contract with one or more private parties to assist the authorized municipality in its implementation or administration, or a combination thereof, of the

local C-PACE program (e.g., C-PACE project financing). Public entities that enter into such agreements may also incur additional expenditures as a result of the bill.

C-PACE loans would be secured by the payment of C-PACE assessments by the participating property owners. As a result, any public entity that finances a C-PACE project is expected to receive annual revenue increases (i.e., C-PACE assessments collections). However, municipalities, counties, and county improvement authorities could incur additional costs associated with the issuance of bonds to finance the C-PACE program.

The OLS notes that the bill is permissive with respect to a participating municipality's or county's participation in the C-PACE program. As a result, the OLS is unable to quantify the impact of the bill on local finances.