SENATE, No. 1953



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use by municipalities of voluntary special assessments for certain property owners.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning the implementation of renewable energy and energy efficiency systems and water conservation, flood and hurricane resistance projects, energy storage, and microgrids, supplementing Titles 34 and 40 of the Revised Statutes, and amending P.L.2011, c.187 and P.L.1960, c.183.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

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

a. Investing in water conservation, stormwater management, renewable energy, and energy efficiency improvements to real property is beneficial over time, and flood and hurricane mitigation projects for existing properties is a critical component in conserving natural resources and mitigating the effects of floods and hurricanes, and upfront costs are a barrier to investing in such major energy, water, and resiliency improvements;

b. There are few financing options for such improvements that combine easy qualification, an attractive interest rate, and a relatively long repayment term;

c. Property accessed clean energy, or “PACE,” lending, in which repayment is by way of a special assessment on the real property to which the improvement was made, provides an innovative way for property owners to finance renewable energy, energy and water efficiency, and other eligible improvements which, in turn, results in property owners saving a significant sum in energy costs, helps communities create local jobs, results in lower mortgage foreclosures, and stimulates local economies and lower emissions;

d. PACE financing will enable New Jersey municipalities to contribute toward meeting community sustainability, greenhouse gas emissions reductions, and energy goals, and will provide a valuable service to the citizens of their communities; and

e. PACE financing, and the powers conferred and expenditures made pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), serve a valid public purpose and enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) is expressly declared to be in the public interest.

2. (New section) As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

“Authority” means the New Jersey Economic Development Authority, and for purposes of P.L. , c. (C. ) (pending before the Legislature as this bill) shall also include other related State agencies and or third-party administrators as may be engaged by the authority for the purposes of providing the services authorized by the rules and regulations adopted pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

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

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

“NJPACE program” means the program established by the authority pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) in which a municipality may elect to participate.

“PACE” is an acronym for the term “property assessed clean energy.”

“PACE project” means any category of improvement that the authority identifies pursuant to rules or regulations, including but not limited to an energy efficiency improvement, renewable energy system, energy storage, microgrid, water conservation project, stormwater management system, zero emission vehicle charging infrastructure, flood resistant construction project, and hurricane resistant construction project which is undertaken by the owner of real property located within a participating municipality and permanently affixed to such property.

“PACE special assessment” means a local improvement assessment, in accordance with chapter 56 of Title 40 of the Revised Statutes, imposed by a participating municipality on a property, with the consent of the owner of such property, as a means of securing a loan made by a lender to finance a PACE project at such property, payments in respect of which assessment are collected by the participating municipality and remitted to the lender.

“Participating municipality” means a municipality that has adopted an ordinance in the form prescribed by the authority authorizing its participation in the NJPACE program, as well as taken such other actions as the authority may establish in rules and regulations adopted pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), including designating the authority to manage, oversee, and administer its participation in the program implementation or any combination thereof.

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

“Project costs” mean the costs associated with a PACE project, and shall include: the hard costs of purchasing, constructing or acquiring the project; soft costs, including but not limited to engineering fees, inspection fees and permits, and costs relating to the measurement and verification of project savings; and costs of utilizing the NJPACE program, including but not limited to program fees, closing costs, and interest and other financing charges.

“Property” means an industrial, agricultural, or commercial property, or a residential property with five or more dwelling units, within a municipality upon which a PACE special assessment is imposed at the request of a property owner in connection with a PACE project.

“Property owner” means the owner of a property within a municipality who requests that a PACE special assessment be imposed on the property in connection with a PACE project.

“Renewable energy system” means an improvement in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bio-mass, or wind energy, together with such other fuels and energy sources that the authority, after consultation with the Board of Public Utilities, may determine pursuant to rules and regulations adopted pursuant to P.L.    , c. (C. ) (pending before the Legislature as this bill).

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

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

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

3. (New section) a. The authority shall establish a NJPACE program to facilitate the financing of PACE projects that fulfills the requirements enumerated herein, as well as those rules, regulations, guidelines, and other requirements established by the authority as part of the administration of the program. The NJPACE program shall consist of, among other things, the implementation of PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a PACE special assessment to be imposed on properties within the municipality, if the owner of a property requests the PACE special assessment in order to undertake and finance a PACE project. PACE projects on an individual property subject to the same PACE special assessment agreement collectively shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby.

b. The authority may enter into a memorandum of agreement with one or more State government agencies or instrumentalities whereby any of the powers the authority may exercise or responsibilities it must fulfill pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) may be exercised or fulfilled, as the case may be, by such agency or instrumentality, and any fund that may be used for administrative expenses by the authority may be used by such agency or instrumentality in exercising such powers or fulfilling such responsibilities.

c. The authority may also hire and set the compensation of one or more private parties, whether for-profit or not-for-profit, to assist the authority in its administration of the program pursuant to a competitive bidding process in accordance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill). The authority may delegate to such one or more private parties such matters as may be determined by rules and regulations adopted by the authority, provided that under no circumstances may the authority delegate its responsibility for general oversight of the NJPACE program.

d. The authority may establish a loan loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by lenders providing PACE loans, in order to improve the availability and financial terms of such financing for PACE projects for property owners.

e. The authority may purchase PACE loans from lenders and hold them until maturity, or resell them to other private parties, either individually or aggregated in securitized form.

f. Pursuant to the purpose and objectives outlined in P.L. , c. (C. ) (pending before the Legislature as this bill), and with respect to the responsibilities of administering the NJPACE program, the authority shall issue rules and regulations and guidelines further establishing the terms and conditions under which financing may be provided under the program, in consultation with the Board of Public Utilities and the Division of Local Government Services in the Department of Community Affairs.

g. The authority shall determine compliance with the underwriting criteria and other requirements set forth in P.L. , c. (C. ) (pending before the Legislature as this bill), and the rules, regulations, and guidelines adopted pursuant thereto, and shall include an accounting of the NJPACE Program in the annual report required each year pursuant to subsection a. of section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill).

4. (New section) a. Eighteen months after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), and annually thereafter, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report describing the implementation and operation of the NJPACE program, including program receipts, disbursements, and earnings. The annual report may also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

b. No later than five years after the date of enactment of P.L.    , c.   (C.        ) (pending before the Legislature as this bill), the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report that reviews and assesses implementation of the NJPACE program. The report shall evaluate the NJPACE program, and review foreclosure rates, cost-effectiveness of PACE projects, reasonableness of costs to property owners, and any other factors the authority deems appropriate. The report shall also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

c. The authority shall post all reports prepared pursuant to this subsection on its Internet website.

5. (New section) a. Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the authority may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority determines to be necessary to effectuate the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), which rules and regulations shall be effective for a period not exceeding 360 days following the effective date of P.L.    , c. (C. ) (pending before the Legislature as this bill). Such rules and regulations shall, thereafter, be amended, adopted, or readopted by the authority in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

The rules and regulations shall include, but not be limited to:

(1) the necessary application requirements and procedures for a property owner seeking PACE financing and a lender seeking to make PACE loans;

(2) the necessary qualifications and requirements for a proposed PACE project, including the qualifications and requirements for projects other than energy efficiency improvements and renewable energy systems, which may include, without limitation, resiliency-related projects, water efficiency improvements, and energy storage, microgrid, and combined heat and power projects;

(3) the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the NJPACE program;

(4) a requirement that all existing lien holders on a property be given notice prior to a PACE special assessment and lien being filed in connection with that property, and that all property owners seeking a PACE loan receive consent of the existing mortgage holders on the property prior to the authority’s approval of the PACE loan;

(5) a requirement that term of the PACE loan be no longer than the forecast life of the improvements; and

(6) forms of agreement and other documents necessary for the efficient administration of the NJPACE program.

b. Prior to adoption of the rules and regulations pursuant to subsection a. of this section, the authority shall organize and hold a public stakeholder meeting regarding the rules and regulations, after providing, by publication of a notice not less than 20 days prior to such meeting including the time, date, and place thereof.

c. The NJPACE program shall not be operational and available for the participation of municipalities and property owners until rules and regulations, and program guidelines have initially been adopted by the authority pursuant to subsection a. of this section.

6. (New section) a. Notwithstanding any provision of chapter 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.), or any other law to the contrary, a municipality shall follow the following process to establish and implement a NJPACE program pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill):

(1) A municipal ordinance shall establish a form of PACE special assessment agreement to be entered into with NJPACE program participants, and identify whether the NJPACE program will be implemented, financed, and managed by the municipality, the county, or by a county improvement authority, or by another public entity or private entity.

(2) The municipal ordinance required by the authority to be adopted by a municipality shall prescribe criteria for participation in the NJPACE program at the time of the initial financing, which criteria shall include, at a minimum, the following:

(a) that PACE financing recipients are either the legal owners of the underlying property or provide the written consent of the legal owners of the underlying property, are current on mortgage and property tax payments with respect to the underlying property, and are not the subject of a default or in bankruptcy proceedings;

(b) an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project; and

(c) require that an appraisal be conducted, if one is not conducted by the lender for the PACE project.

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

(3) The municipal ordinance shall require that a disclosure form summarizing PACE financing risks provided by the NJPACE program administrator and the lender be signed by the owner of each property. The disclosure form shall include, but need not be limited to, the following information:

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

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

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

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

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

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

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

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

(4) The municipal ordinance shall also require that the NJPACE program include the following consumer protection provisions:

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

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

(c) a prohibition restricting specific monetary or percentage estimates on property value changes as a result of the PACE project.

b. The amount of a PACE special assessment shall be a specific amount, not to exceed the project costs of the PACE project. The specific amount of a PACE special assessment, which shall be consented to by the property owner by its execution of a PACE special assessment agreement in the form promulgated by the authority, shall be deemed the benefit conferred with respect to the property and shall be in lieu of the amount being determined by any other procedures set forth in Title 40 of the Revised Statutesotherwise applicable to determining the actual benefit conferred on the property. No other confirmation or determination of the amount of the PACE special assessment, including, but not limited to the procedure set forth at R.S.40:56-30, shall be required.

c. Subject to the written consent of existing mortgage holders, the form of which shall be determined by the authority in its rules regulations, or guidelines, a PACE special assessment shall be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded, on and after the date of recordation of the agreement. Upon recordation of the PACE special assessment agreement in the land records of the county in which the property is located, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, without any additional notice, recording, filing, continuation filing, or action, until payment in full of the PACE special assessment, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any other proceeding which does not impair the substantial rights of the owner or owners or other person or persons having a lien upon or interest in any such real estate. Any confirmation of the amount of the assessment by the governing body or by the court shall be considered as determining the amount of the existing lien and not as establishing the lien. All assessments shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

A PACE special assessment shall not be considered an “equivalent consensual security interest” for the purposes of the “New Jersey Residential Mortgage Lending Act,” P.L.2009, c.53 (C.17:11C-51 et seq.). A PACE special assessment shall be treated as a municipal lien rather than a contractual lien for all purposes of law.

d. Funds to implement a PACE project may be disbursed to the property owner at execution of the PACE special assessment agreement, or may be disbursed in installments over time. Such funds shall not constitute public funds, and shall not be subject to the laws governing public funds, including but not limited to laws regarding the receipt, expenditure, deposit, investment, or appropriation of the same. A PACE project shall not be considered a “facility” or “public facility” within the meaning of the “county improvement authorities law,” P.L.1960, c.183 (C.40:37A-44 et seq.). Payments of PACE special assessments shall commence as set forth in the PACE special assessment agreement. To the extent that upon completion of the PACE project, funds remain which have not been disbursed to the property owner for a PACE project, those funds on hand shall be used to reduce the amount of the PACE special assessment.

e. Except as provided in subsection g. of this section, if any payment of a PACE special assessment is not made within 10 days after the time when that payment shall have become due, or later, consistent with any grace period provided or extended by a municipality for the payment of property tax bills, interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the municipality, and collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the municipality shall enforce collection of its unpaid property taxes through accelerated tax sale. However, the balance due on a PACE special assessment shall not be subject to acceleration in the event of a default in payment. Notwithstanding any other provision of law, in the event that any lien on the property shall be exposed to tax sale, pursuant to the “tax sale law,” R.S.54:5-1 et seq., and any such lien is struck off and sold to the municipality, the PACE special assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, and provided that, notwithstanding the obligations of a municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5-53.1), while the municipality holds such lien or owns such property, the municipality shall not be responsible for or required to make any payment in furtherance of or to satisfy any such PACE special assessment.

f. PACE special assessments may be assigned directly by the municipality, and any assignee thereof, as security for the repayment of any obligations of a property owner to a lender that has provided a PACE loan, to such lender, or any assignee thereof.

Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the municipality’s right, title, and interest in and to the PACE special assessment, along with the rights and remedies provided to the municipality under the PACE special assessment agreement, including, but not limited to, the right to direct the collection of payments due. PACE special assessments assigned as provided hereunder shall not be included in the general funds of the municipality, or be subject to any laws regarding the receipt, deposit, investment, or appropriation of public funds, and shall retain such status notwithstanding enforcement of the assessment by the municipality or assignee as provided herein. In the case of a municipality which is otherwise subject to tax or revenue sharing pursuant to law and which assigns PACE special assessments as set forth in this section, such PACE special assessments shall not be considered part of the tax or revenue sharing formula or calculation of municipal revenues for the purpose of determining whether that municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool.

g. Notwithstanding any other law to the contrary, in any foreclosure action due to nonpayment or late payment of a PACE special assessment for property in the NJPACE program, service of the complaint on all parties shall be made by personal service, hand-delivered by the sheriff or personal process server, and the procedure for obtaining a final judgment shall conform to the procedures and requirements of the in personam foreclosure process.

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

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

b. Notwithstanding the provisions of subsection a. of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not approve an application and a municipality shall not undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date of enactment of P.L. , c. (C.     ) (pending before the Legislature as this bill).

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

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

2. a. (1) Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, a municipality may adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners. The governing body may apply to a county improvement authority that issues bonds pursuant to paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2). Funds for the purchase and installation of renewable energy systems and energy efficiency improvements shall be loaned to property owners in exchange for a clean energy special assessment on the property pursuant to section 1 of P.L.2011, c.187 (C.40:56-1.4), to be paid quarterly. In the case of financing provided by bonds issued by a county improvement authority, the clean energy special assessment shall be used to repay the bonds. In the case of financing provided by the municipality through the issuance of municipal bonds, the clean energy special assessment shall be used to repay the bonds. A property owner who purchases and installs a renewable energy system under the program may also assign any solar renewable energy certificates or other renewable energy credits that accrue to the property owner from the operation of the system to the municipality or the county improvement authority to repay the loan for the system. The Director of Local Government Services in the Department of Community Affairs shall coordinate efforts with the Board of Public Utilities to ensure that the amount of financing made available by local programs authorized pursuant to this act is in accordance with limits set from time to time by the Board of Public Utilities in order to ensure that local programs further the goals of the Office of Clean Energy in the Board of Public Utilities.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not approve an application and a municipality shall not adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date of enactment of P.L. , c. (C.     ) (pending before the Legislature as this bill).

b. As used in this section, “solar renewable energy certificate” shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

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

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

3. a. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the governing body of a municipality may establish the amounts of money to be expended by the municipality for the improvements authorized in sections 1 and 2 of P.L.2011, c.187 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may be raised by the issuance of clean energy special assessment bonds by the municipality. In making the appropriation, the governing body may designate the particular projects to be financed to which the moneys shall be applied.

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

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

d. Notwithstanding the provisions of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not approve an application pursuant to subsection a. of this section after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50 **[**%**]** percent of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in **[**this act**]** the “county improvement authorities law,” P.L.1960, c.183 (C.40:37A-44 et seq.), including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of **[**this act**]** the “county improvement authorities law,” P.L.1960, c.183 (C.40:37A-44 et seq.), as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A county improvement authority shall also have as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units. A county improvement authority shall also have as its purpose the implementation, management, oversight, and administration of a NJPACE program, as defined in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.2002, c.42, s.8)

11. This act shall take effect immediately, except that the NJPACE program shall be inoperable until the adoption of the rules and regulations required pursuant to subsection a. of section 5 of this act.

STATEMENT

This bill would require the Economic Development Authority (EDA) to establish a “NJPACE program.”

“PACE” is an acronym for the term “property assessed clean energy.” As defined in the bill, “PACE project” means any category of improvement that the EDA identifies pursuant to rules or regulations, including but not limited to an energy efficiency improvement, renewable energy system, energy storage, microgrid, water conservation project, stormwater management system, zero emission vehicle charging infrastructure, flood resistant construction project, and hurricane resistant construction project which is undertaken by the owner of real property located within a participating municipality and permanently affixed to such property.

The NJPACE program, to be established by the EDA pursuant to this bill, would consist of, among other things, the implementation of PACE projects to be undertaken by property owners as local improvements and the provision by municipal ordinance for a PACE special assessment to be imposed on properties within the municipality, if the owner of a property requests the PACE special assessment in order to undertake and finance a PACE project. The special assessment would be used to repay the loan for the 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. PACE projects on an individual property subject to the same PACE special assessment agreement collectively would constitute a separate local improvement and would be assessed separately to the property owner benefitted thereby.

The bill provides that the EDA may enter into a memorandum of agreement with one or more State government agencies or instrumentalities authorizing the agency or instrumentality to exercise the EDA’s powers or responsibilities under the bill. The bill also provides that the EDA may hire and set the compensation for one or more private parties, whether for-profit or not-for-profit, to assist in the administration of the NJPACE program pursuant to a competitive bidding process. However, the EDA could not delegate its responsibility for general oversight of the NJPACE program.

The bill provides that the EDA may establish a loan loss reserve, issue guarantees, or both, to mitigate the repayment risk assumed by lenders providing PACE loans, in order to improve the availability and financial terms of financing for PACE projects for property owners. In addition, the EDA may purchase PACE loans from lenders and hold them until maturity, or resell them to other private parties, either individually or aggregated in securitized form.

The bill requires the EDA to adopt rules and regulations and guidelines further establishing the terms and conditions under which financing may be provided under the program, in consultation with the Board of Public Utilities and the Division of Local Government Services in the Department of Community Affairs.

The bill requires the EDA to adopt rules and regulations to implement the NJPACE program, which would include, but not be limited to:

(1) the application requirements and procedures for a property owner seeking PACE financing and a lender seeking to make PACE loans;

(2) the qualifications and requirements for a proposed PACE project, including the qualifications and requirements for projects other than energy efficiency improvements and renewable energy systems, which may include, without limitation, resiliency-related projects, water efficiency improvements, and energy storage, microgrid, and combined heat and power projects;

(3) the underwriting criteria to be applied in determining the eligibility of properties and their owners to participate in the NJPACE program;

(4) a requirement that all existing lien holders on a property be given notice prior to a PACE special assessment and lien being filed in connection with that property, and that all property owners seeking a PACE loan receive consent of the existing mortgage holders on the property prior to the EDA’s approval of the PACE loan;

(5) a requirement that term of the PACE loan be no longer than the forecast life of the improvements; and

(6) forms of agreement and other documents necessary for the efficient administration of the NJPACE program.

The bill would require the EDA, 18 months after the date the bill is enacted into law, and annually thereafter, to prepare and submit a report to the Governor and the Legislature describing the implementation and operation of the NJPACE program, including program receipts, disbursements, and earnings. In addition, the bill requires the EDA, no later than five years after the date the bill is enacted into law, to prepare and submit a report to the Governor and the Legislature, that reviews and assesses implementation of the NJPACE program. This report would evaluate the NJPACE program, and review foreclosure rates, cost-effectiveness of PACE projects, reasonableness of costs to property owners, and any other factors the EDA deems appropriate, and also identify and recommend any legislative changes to the law authorizing the NJPACE program that may be necessary.

Further, section 6 of the bill establishes the process for a municipality to establish and implement a NJPACE program pursuant to the bill and sets forth the requirements to be included in a municipal ordinance. The municipal ordinance would, at a minimum:

(1) require that PACE financing recipients are either the legal owners of the underlying property or provide the written consent of the legal owners of the underlying property, are current on mortgage and property tax payments with respect to the underlying property, and are not the subject of a default or in bankruptcy proceedings;

(2) establish an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project;

(3) require that a disclosure form summarizing PACE financing risks provided by the NJPACE program administrator and the lender be signed by the owner of each property; and

(4) include certain specified consumer protection provisions.

The municipal ordinance may establish standards for the maximum amount, or duration of a PACE special assessment, or both, but in no event would the maximum duration of a PACE special assessment exceed 30 years. The amount of a PACE special assessment would be a specific amount, not to exceed the project costs of the PACE project.

A PACE special assessment would be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded, on and after the date of recordation of the agreement. In addition, a PACE special assessment would be treated as a municipal lien rather than a contractual lien for all purposes of law.

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 of enactment of this bill into law.

Lastly, the bill would amend the “county improvement authorities law” to add to the purposes of a county improvement authority the implementation, management, oversight, and administration of a NJPACE program pursuant to the bill.