

[Third Reprint]

ASSEMBLY, No. 2579

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED FEBRUARY 10, 2014

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblyman TIMOTHY J. EUSTACE

District 38 (Bergen and Passaic)

Co-Sponsored by:

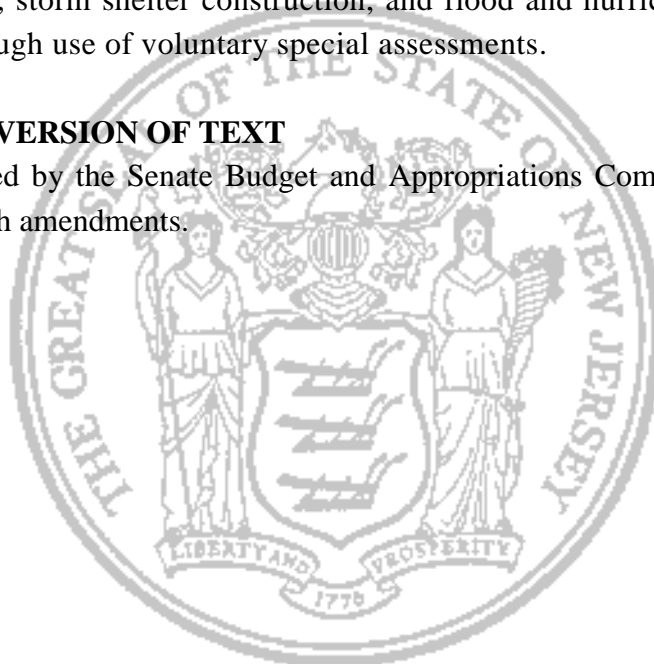
**Assemblymen Benson, McKeon, Assemblywoman Spencer and
Assemblyman Gusciora**

SYNOPSIS

Authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through use of voluntary special assessments.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 22, 2015, with amendments.



(Sponsorship Updated As Of: 1/30/2015)

1 AN ACT concerning the ¹**["financing"]** implementation¹ of
 2 'renewable energy and energy efficiency systems and' water
 3 conservation, storm shelter construction, and flood and
 4 hurricane resistance projects, ¹**["and"]**¹ amending P.L.1960, c.183
 5 and P.L.2011, 187 ¹and supplementing chapter 56 of Title 40 of
 6 the Revised Statutes¹.

7
 8 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 9 *of New Jersey:*

10
 11 ²1. (New section) The Legislature finds and declares it to be the
 12 public policy of this State that:

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

19 b. PACE legislation provides an innovative way for property
 20 owners to finance energy and water efficiency improvements which,
 21 in turn, result in homeowners saving a significant sum in energy
 22 costs and which also help communities create local jobs, result in
 23 lower mortgage foreclosures, and stimulate local economics and
 24 lower emissions; and

25 c. PACE financing will allow New Jersey municipalities to
 26 contribute in order to help meet community sustainability,
 27 greenhouse gas emissions reductions, and energy goals, and will
 28 provide a valuable service to the citizens of their communities.²

29
 30 ²**["1.]"** ²2. (New section) As used in this section, and in
 31 P.L.2011, c.187 (C.40:56-1.4 et al.):

32 "Bonds" mean bonds or other obligations issued by a
 33 municipality ³, county,³ or county improvement authority, as
 34 applicable, for the purposes set forth in this ²**["act"]** section and in
 35 P.L.2011, c.187 (C.40:56-1.4 et al.)².

36 ³**["Director" means the Director of the Division of Local**
 37 **Government Services in the Department of Community Affairs.]³**

38 "Energy efficiency improvement" means an improvement to
 39 reduce energy consumption through conservation or a more
 40 efficient use of electricity, natural gas, propane, or other forms of
 41 energy, including, but not limited to: air sealing; installation of
 42 insulation; installation of energy-efficient electrical, heating,

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 December 15, 2014.

²Senate SBA committee amendments adopted May 14, 2015.

³Senate SBA committee amendments adopted June 22, 2015.

1 cooling or ventilation systems; building modifications to increase
2 the use of daylight; replacement of windows; installation of energy
3 controls or energy recovery systems; installation of electric vehicle
4 charging equipment; and installation of efficient lighting
5 equipment.

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

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

16 "PACE" is an acronym for the term "property assessed clean
17 energy."

18 "PACE project" means the purchase, lease, or installation, or any
19 combination thereof, of renewable energy systems or the energy
20 produced by such systems, energy efficiency improvements, water
21 conservation projects, flood resistant construction projects,
22 hurricane resistant construction projects, storm shelter projects, or
23 safe room projects, undertaken by property owners ³through a
24 purchase contract, lease, power purchase agreement, or through
25 other agreements or means, ³ on properties within a municipality.

26 "PACE program" means a program established by a municipality
27 by ordinance, providing for the imposition of PACE special
28 assessments on ³[²qualifying²]³ properties within the municipality,
29 in which the owner of such property has requested the PACE
30 special assessment.

31 "PACE special assessment" means a ²[special] local
32 improvement² assessment ², in accordance with chapter 56 of Title
33 40 of the Revised Statutes,² to be imposed on a property in
34 connection with a PACE project.

35 ²"Private entity" means a private for-profit or non-profit
36 corporation, partnership, or any other form of private organization,
37 including but not limited to a "related competitive business segment
38 of a public utility holding company," or a "related competitive
39 business segment of an electric public utility or gas public utility,"
40 as defined under section 3 of P.L.1999, c.23 (C.48:3-51), so long as
41 the organization is not subject to the jurisdiction of the Board of
42 Public Utilities.²

43 "Project costs" mean the costs associated with a PACE project,
44 and shall be deemed to include: the hard costs of leasing,
45 purchasing, constructing or acquiring the project; soft costs,
46 including but not limited to engineering fees, inspection fees and
47 permits, and costs relating to the measurement and verification of

1 project savings; costs of utilizing the PACE program, including but
2 not limited to program fees ²[and] ² closing costs ², and interest
3 and other financing charges² ; and bond issuance costs, including
4 but not limited to professional fees and the costs of funding
5 capitalized interest, if any, or a debt service reserve fund, if any.

6 "Property" means ³an industrial, agricultural, residential or
7 commercial³ property within a municipality upon which a PACE
8 special assessment is imposed at the request of a property owner in
9 connection with a PACE project.

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

13 "Renewable energy system" means an improvement in which the
14 electrical, mechanical, or thermal energy is produced from a method
15 that uses one or more of the following fuels or energy sources:
16 hydrogen, solar energy, geothermal energy, bio-mass or wind
17 energy.

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

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

25 "Water conservation project" means an improvement that
26 reduces water consumption, increases the efficiency of water use, or
27 reduces water loss.¹

28

29 ¹[1.] ²[2.1] ³2 Section 1 of P.L.2011, c.187 (C.40:56-1.4) is
30 amended to read as follows:

31 1. ¹[Upon application to and approval by the Director of the
32 Division of Local Government Services in the Department of
33 Community Affairs, the] a. The¹ governing body of a municipality

34 ¹[, or a qualified private or non-profit entity serving as its

35 administrator,] may ¹adopt an ordinance to¹ undertake the

36 ¹[financing of the purchase and installation of water conservation

37 projects, flood resistant construction projects, hurricane resistant

38 construction projects, storm shelter projects, safe room projects,

39 renewable energy systems , and energy efficiency improvements]

40 development, implementation, administration, or financing, or any

41 combination thereof, of a PACE program. ³[An introduced

42 ordinance to establish a PACE program shall not be adopted

43 without the director's approval in]

44 b. Notwithstanding subsection a. of this section,³ municipalities
45 that (1) are receiving, or have received State Aid through the
46 Transitional Aid to Localities program within the three most recent
47 fiscal years, (2) are subject to State supervision pursuant to the

1 "Local Government Supervision Act (1947)," P.L.1947, c.151
 2 (C.52:27BB-1 et seq.), or (3) are subject to the "Municipal
 3 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
 4 (C.52:27BBB-1 et al.). ³["The director shall approve the ordinance
 5 for final adoption if the municipality demonstrates that it has the
 6 appropriate employees and other resources necessary to impose and
 7 collect the PACE special assessments and to execute any necessary
 8 transfers with respect to any pledge and assignment in connection
 9 therewith] are prohibited from developing, financing, or otherwise
 10 administering a PACE program unless the municipality designates,
 11 by ordinance, a county or county improvement authority to develop,
 12 administer, and finance, a PACE program to serve the residents of
 13 the municipality. Notwithstanding any such designation, the
 14 municipality shall continue to possess all rights to impose, assess,
 15 collect and enforce any assessment imposed pursuant to P.L.2011,
 16 c.187 (C.40:56-1.4 et al.)³.

17 The PACE program shall consist of, among other things, the
 18 implementation of PACE projects to be undertaken¹ by property
 19 owners as ¹[a]¹ local ¹[improvement] improvements¹ and ¹[may
 20 provide] the provision¹ by ordinance for a ¹["clean energy and
 21 storm resistance] "PACE¹ special assessment" to be imposed on [a
 22 property] properties within the municipality, if the owner of [the] a
 23 property requests the ¹PACE special¹ assessment in order to
 24 ¹[install such systems or improvements] undertake a PACE
 25 project¹. ¹[Each improvement] PACE projects¹ on an individual
 26 property ¹subject to the same PACE special assessment agreement
 27 collectively¹ shall constitute a separate local improvement and shall
 28 be assessed separately to the property owner benefitted thereby.
 29 [The clean energy special assessment shall be payable in quarterly
 30 installments.] ¹[The terms of the clean energy and storm resistance
 31 special assessment shall be in accordance with the terms of the
 32 financing provided by the municipality pursuant to section 2 of
 33 P.L.2011, c.187 (C.40:56-13.1).]

34 ³[b.] c.³ A municipality ³, or county or county improvement
 35 authority if designated by a municipality under subsection b. of this
 36 section,³ may designate a ³county,³ county improvement
 37 authority ², another public entity,² or ³[a private ²[or non-profit]²
 38 entity] one or more private entities³ to manage, oversee, administer,
 39 finance or implement, or any combination thereof, all or any part of
 40 the PACE program on the municipality's behalf. To the extent that
 41 a ³county,³ county improvement authority ²or other public entity² is
 42 designated to manage, oversee, administer, finance or implement, or
 43 any combination thereof, all or any part of a PACE program on the
 44 municipality's behalf, the ³county,³ county improvement authority
 45 ²or other public entity² may designate a ³[private ²[or non-profit]²
 46 entity] one or more private entities³ to manage, oversee, administer,

1 finance^{2,2} or implement, or any combination thereof, all or any
 2 portion of such activities.¹

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

4

5 ¹~~2.~~ ²~~3.~~ ¹~~4.~~ Section 2 of P.L.2011, c.187 (C.40:56-13.1) is
 6 amended to read as follows:

7 2. a. ¹~~Upon application to and approval by the Director of the~~
 8 ~~Division of Local Government Services in the Department of~~
 9 ~~Community Affairs, a qualified private or non-profit entity may~~
 10 ~~establish a program to finance the purchase and installation of water~~
 11 ~~conservation projects, flood resistant construction projects,~~
 12 ~~hurricane resistant construction projects, storm shelter projects, safe~~
 13 ~~room projects, renewable energy systems, and energy efficiency~~
 14 ~~improvements by property owners within municipalities contracting~~
 15 ~~with the entity that have also obtained the director's approval.~~
 16 ~~Repayment shall be completed through the clean energy and storm~~
 17 ~~resistance special assessment. Upon application approval, the entity~~
 18 ~~may administer: lending】 A ³county,³ county improvement~~
 19 ~~authority or ²private or non-profit】 other public entity, or a~~
 20 ~~private² entity designated by a municipality or ²a² ³county,³ county~~
 21 ~~improvement authority ²or other public entity,² pursuant to~~
 22 ~~subsection b. ³or c.³ of section 1 of P.L.2011, c.187 (C.40:56-1.4)~~
 23 ~~to administer or implement a PACE program may: administer¹~~
 24 ~~agreements between ¹the】 a private¹ entity ¹itself】 and property~~
 25 ~~owners; ¹lending】 administer¹ agreements between municipalities~~
 26 ~~and property owners pursuant to section 3 of P.L.2011, c.187~~
 27 ~~(C.40:56-13.2); ¹lending】 administer¹ agreements involving~~
 28 ~~county improvement authorities pursuant to paragraph (2) of~~
 29 ~~subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55);~~
 30 ~~¹lending】 administer¹ agreements involving private entities that~~
 31 ~~participate in the program; ¹administer¹ the sale of solar renewable~~
 32 ~~energy certificates from participating property owners; and~~
 33 ~~¹undertake¹ any other appropriate responsibilities ¹as set forth in its~~
 34 ~~agreement with the municipality ²or, ² ³county,³ county~~
 35 ~~improvement authority, ²or other public entity,² as applicable¹ .~~
 36 ~~¹Any contract between the entity and a municipality or county~~
 37 ~~improvement authority shall be subject to the "Local Public~~
 38 ~~Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.)】~~

39 b. Notwithstanding the provisions of the "Local Public
 40 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), agreements
 41 between a municipality ³, county,³ or county improvement authority
 42 and a private ²or non-profit】² entity shall be on such terms and
 43 conditions as the municipality ³, county,³ or county improvement
 44 authority shall deem necessary or desirable¹ .

45 ¹Upon application to and approval by the Director of the
 46 Division of Local Government Services in the Department of

1 Community Affairs, a municipality may adopt an ordinance to
2 establish a program to finance the purchase and installation of water
3 conservation projects, flood resistant construction projects,
4 hurricane resistant construction projects, storm shelter projects, safe
5 room projects, renewable energy systems , and energy efficiency
6 improvements by property owners. Pursuant to this section, the
7 establishment of this program may merely involve contracting with
8 a qualified private or non-profit entity, subject to the "Local Public
9 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), upon the
10 director's approval, to administer the program on the municipality's
11 behalf.】

12 c.¹ The governing body ³of a municipality³ may apply to a
13 county, or to a³ county improvement authority that issues bonds
14 pursuant to paragraph (2) of subsection (j) of section 12 of
15 P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the
16 program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2).

17 ¹(1) ³**【Bonds】** Notwithstanding any other law to the contrary,
18 bonds³ issued by a ³county or³ municipality shall be authorized and
19 issued ³【in the manner set forth in the "Local Bond Law"
20 (N.J.S.40A:2-1 et seq.), except that:

21 (a) the ordinance may be adopted notwithstanding the provisions
22 of N.J.S.40A:2-11, and no down payment ²【will】 shall² be
23 required;

24 (b) the provisions of N.J.S.40A:2-22, concerning periods of
25 usefulness, and N.J.S.40A:2-26, concerning bond maturity, shall not
26 apply;

27 (c) the provisions of N.J.S.40A:2-27, concerning the public sale
28 of bonds, shall not apply, and instead the bonds may be sold at
29 public or private sale, at the option of the municipality; and

30 (d) if the bonds are non-recourse to the full faith and credit of
31 the municipality, no】 by ordinance of such county or municipality,
32 may be issued in one or more series, on such additional terms and
33 may be sold at public or private sale, all as set forth in the
34 ordinance.

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

39 (b) No³ review of the Local Finance Board with respect to the
40 authorization or issuance of the bonds shall be required.

41 ³(c)³ Bonds issued by a county improvement authority shall be
42 authorized and issued in the manner set forth in the "county
43 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et
44 seq.).¹

45 ³【¹(2)¹】 (3)³ In addition, the ¹municipal¹ governing body, or the
46 entity serving as its administrator, may use funding through private
47 entities ²or public entities² to finance the ¹PACE¹ program ³;

1 provided that no such funding shall be guaranteed or secured by the
2 full faith and credit of any public entity, including the State of New
3 Jersey³. Funds for the ¹[purchase and installation of water
4 conservation projects, flood resistant construction projects,
5 hurricane resistant construction projects, storm shelter projects, safe
6 room projects, renewable energy systems, and energy efficiency
7 improvements shall be loaned] implementation of PACE projects
8 shall be made available¹ to property owners in exchange for a
9 ¹[clean energy and storm resistance] PACE¹ special assessment on
10 the property pursuant to section 1 of P.L.2011, c.187 (C.40:56-1.4)
11 [, to be paid quarterly]. ¹[In the case of financing provided by
12 bonds issued by a county improvement authority, or by the
13 municipality through the issuance of municipal bonds, the clean
14 energy and storm resistance] The PACE¹ special assessment shall
15 be used to repay the ¹debt service on the¹ bonds ¹or other ²public
16 entity or private entity financing² obligations and the project costs¹.
17 [In the case of financing provided by the municipality through the
18 issuance of municipal bonds, the clean energy special assessment
19 shall be used to repay the bonds.] ¹[In the case of financing
20 through private entities, repayment shall also be completed through
21 the clean energy and storm resistance special assessment.]¹

22 ¹d.¹ A property owner who ³[purchases and]³ installs a
23 renewable energy system under the program may also ¹, if
24 permitted by the municipality,¹ assign ¹or transfer¹ any solar
25 renewable energy certificates or other renewable energy
26 ¹certificates or¹ credits that accrue to the property owner from the
27 operation of the system to the municipality [or], the county
28 improvement authority ², other public entity², or the private entity
29 ¹[to repay the loan for the system], as applicable, which has
30 financed the PACE project. If any solar renewable energy
31 certificates or other renewable energy certificates or credits are
32 assigned or transferred to a municipality, ³county,³ county
33 improvement authority, ²other public entity,² or private ²[or non-
34 profit]² entity, the municipality, ³county,³ county improvement
35 authority, ²other public entity,² or private ²[or non-profit]² entity is
36 authorized to sell, grant, assign, convey or otherwise dispose of its
37 interest in the certificates or credits to repay the bonds or
38 obligations and the project costs¹. ¹[The Director of the Division
39 of Local Government Services in the Department of Community
40 Affairs shall coordinate efforts with the Board of Public Utilities to
41 ensure that the amount of financing made available by local
42 programs authorized pursuant to [this act] P.L.2011, c.187
43 (C.40:56-1.4 et al.), is in accordance with limits set from time to
44 time by the Board of Public Utilities in order to ensure that local
45 programs to fund projects categorized as renewable energy systems

1 and energy efficiency improvements further the goals of the Office
2 of Clean Energy in the Board of Public Utilities.

3 b. As used in **[this section,]** P.L.2011, c.187 (C.40:56-1.4 et
4 al.):

5 "Director" means the Director of the Division of Local
6 Government Services in the Department of Community Affairs.

7 "Flood resistant construction project" means a project that
8 mitigates the likelihood of substantial flood damage, including but
9 not limited to the installation of break-away walls and building
10 elevation alterations, following standards that the director deems
11 appropriate.

12 "Hurricane resistant construction project" means an improvement
13 that brings a component of a structure into compliance with the
14 standards for a "wind-borne debris region" under the State Uniform
15 Construction Code, or another standard that the director deems
16 appropriate.

17 "Safe room project" or "storm shelter project" means an
18 improvement that creates a hardened structure specifically designed
19 to meet criteria set forth by the Federal Emergency Management
20 Agency and provide "near-absolute protection" in extreme weather
21 events, including tornadoes and hurricanes, or another standard that
22 the director deems appropriate.

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

25 "Water conservation project" means an alteration or upgrade of a
26 facility or equipment that reduces water consumption, maximizes
27 the efficiency of water use, or reduces water loss, following
28 standards that the director deems appropriate.

29 c. The Director of the Division of Local Government Services in
30 the Department of Community Affairs, in consultation with the
31 Director of the Division of Codes and Standards in the Department
32 of Community Affairs shall establish standards for flood resistant
33 construction projects, hurricane resistant construction projects, safe
34 room projects, storm shelter projects, and water conservation
35 projects.]¹

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

37
38 ¹**[3.]** ²**[4.1]** ^{5.}² Section 3 of P.L.2011, c.187 (C.40:56-13.2) is
39 amended to read as follows:

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

1 to which the moneys shall be applied.】 Notwithstanding any
2 provision of chapter 56 of Title 40 of the Revised Statutes
3 (R.S.40:56-1 et seq.), or any other law to the contrary, a
4 municipality shall follow the following process to establish and
5 implement a PACE program:

6 (1) A municipality may adopt an ordinance pursuant to
7 R.S.40:49-2 to establish a PACE program without complying with
8 the publication, notice, and other requirements applicable to
9 ordinances providing for local improvements otherwise required
10 pursuant to R.S.40:49-6.

11 (2) The municipal ordinance may, but shall not be required to,
12 ³set eligibility criteria for participation in the PACE program,】³
13 establish a form of special assessment agreement to be entered into
14 with PACE program participants, and identify whether the PACE
15 program will be implemented, financed, and managed by the
16 municipality ³county,³ or by a county improvement authority ³, or
17 by another public entity or private entity³ . In lieu of including
18 such information in the ordinance establishing the PACE program,
19 the municipality may instead provide that one or more such items
20 shall be established through a subsequent municipal resolution.

21 (3) ³The municipal ordinance shall prescribe criteria for
22 participation in the PACE program at the time of the initial
23 financing, which criteria shall include, at a minimum, the following:
24 (a) that PACE financing recipients are either the legal owners of the
25 underlying property or provide the written consent of the legal
26 owners of the underlying property, are current on mortgage and
27 property tax payments with respect to the underlying property, and
28 are not the subject of a default or in bankruptcy proceedings, and
29 (b) an appropriate ratio of the assessment to the value of the
30 property, but in no circumstance may the combination of a PACE
31 financing and the existing loan-to-value ratio on a property exceed
32 100 percent.³ The ordinance may establish standards for the
33 maximum amount, or duration of PACE special assessments, or
34 both, but in no event shall the maximum duration of a PACE special
35 assessment exceed 30 years.¹

36 b. ¹【Clean energy and storm resistance special assessments and
37 bonds issued to finance them shall be issued and shall be generally
38 subject to R.S.40:56-21 et seq., as the director shall determine to be
39 applicable.】 The amount of a PACE special assessment shall be a
40 specific amount, not to exceed the project costs of the PACE
41 project. The specific amount of a PACE special assessment, which
42 shall be consented to by the property owner by its execution of a
43 special assessment agreement in the form promulgated by the
44 municipality, shall be deemed the benefit conferred with respect to
45 the property and shall be in lieu of the amount being determined by
46 any other procedures contained in this Title otherwise applicable to
47 determining the actual benefit conferred on the property. No other

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

4 c. ¹【The director is authorized and empowered to take such
5 action as deemed necessary and consistent with the intent of 【this
6 act】 P.L.2011, c.187 (C.40:56-1.4 et al.) to implement its
7 provisions.】 A PACE special assessment shall be a single,
8 continuous first lien on the property against which the PACE
9 special assessment agreement is recorded, on and after the date of
10 recordation of the agreement. Upon recordation³【²by the clerk of
11 the municipality²】³ of the PACE special assessment agreement
12 ³【²with the clerk】 in the land records³ of the county in which the
13 property is located² , the lien thereof shall be perfected for all
14 purposes in accordance with law and the lien shall be a continuous
15 first lien upon the real estate described in the assessment,
16 paramount to all prior or subsequent alienations and descents of
17 such real estate or encumbrances thereon, except subsequent taxes
18 or assessments, without any additional notice, recording, filing,
19 continuation filing or action, until payment in full of the PACE
20 special assessment, notwithstanding any mistake in the name or
21 names of any owner or owners, or any omission to name any owner
22 or owners who are unknown, and notwithstanding any lack of form
23 therein, or in any other proceeding which does not impair the
24 substantial rights of the owner or owners or other person or persons
25 having a lien upon or interest in any such real estate. Any
26 confirmation of the amount of the assessment by the governing
27 body or by the court shall be considered as determining the amount
28 of the existing lien and not as establishing the lien. All assessments
29 shall be presumed to have been regularly assessed and confirmed
30 and every assessment or proceeding preliminary thereto shall be
31 presumed to have been regularly made or conducted until the
32 contrary be shown. A PACE special assessment shall not be
33 considered an "equivalent consensual security interest" for the
34 purposes of the "New Jersey Residential Mortgage Lending Act,"
35 sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).
36 PACE special assessments shall be treated as governmental liens
37 rather than contractual liens for all purposes of law.

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

1 February 1, May 1, August 1 and November 1 in each year, and
2 shall commence as set forth in the PACE special assessment
3 agreement. It is not required that a PACE project be completed in
4 order for the obligation to make payments of the PACE special
5 assessment to commence. To the extent that upon completion of the
6 PACE project, funds remain which have not been disbursed to the
7 property owner for ²a² PACE project, those funds on hand shall be
8 used to reduce the amount of the PACE special assessment. To the
9 extent that during the implementation of a PACE project, it
10 becomes apparent that additional funds may be needed to complete
11 the PACE project, the municipality and the property owner may
12 enter into a supplemental special assessment agreement for the
13 additional amount. Upon recordation of the supplemental special
14 assessment agreement, payments required to be made pursuant to
15 the supplemental PACE special assessment for the completion of
16 the PACE project shall be a continuous lien against the property in
17 accordance with subsection c. of this section.

18 e. When any payment of a PACE special assessment shall not be
19 made within 30 days after the time when that payment shall have
20 become due, interest thereon shall be imposed at the same rate as
21 may be imposed upon unpaid property taxes in the municipality,
22 and collected and enforced in the same manner as unpaid property
23 taxes, including by accelerated tax sale if the municipality shall
24 enforce collection of its unpaid property taxes through accelerated
25 tax sale. However, the balance due on PACE special assessments
26 shall not be subject to acceleration in the event of a default in
27 payment. ²Notwithstanding any other provision of law, in the event
28 that any lien on the property shall be exposed to tax sale, pursuant
29 to the “tax sale law,” R.S.54:5-1 et seq., and any such lien is struck
30 off and sold to the municipality, the PACE special assessment shall
31 survive any subsequent action to foreclose the right of redemption
32 and continue as a first lien upon the real estate described in the
33 assessment, paramount to all prior or subsequent alienations and
34 descents of such real estate or encumbrances thereon, except
35 subsequent taxes or assessments ³, and provided that, while the
36 municipality holds such lien or owns such property, the
37 municipality shall not be responsible for or required to make any
38 payment in furtherance of or to satisfy any such PACE special
39 assessment³ ².

40 f. PACE special assessments may be assigned directly by the
41 municipality ², and any assignee thereof,² as security for the
42 repayment of ²:

43 (1)² bonds or other obligations issued by the municipality ³,
44 county³ or the county improvement authority to finance the PACE
45 projects ², and

46 (2) if a PACE project is financed by a ³[county improvement
47 authority, other]³ public entity ³[,]³ or private entity, any

1 obligations of a property owner with respect to such PACE project
2 to such private entity or public entity, or any assignee thereof².

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

21 g. Notwithstanding any other law to the contrary, a
22 municipality³, county³ or county improvement authority, or ³**[both]**
23 , any of them³, as applicable, shall have the power to enter into any
24 and all agreements as may be necessary or desirable to effectuate
25 the purposes of P.L.2011, c.187 (C.40:56-1.4 et al.), on such terms
26 and conditions as the municipality ³, county³ or county
27 improvement authority shall deem reasonable, with or without
28 public bidding.¹

29 ²h. In the event of any inconsistency between the provisions of
30 P.L.2011, c.187 (C.40:56-1.4 et al.) ³as modified by
31 P.L. c. (C.) (pending before the Legislature as this bill)³,
32 with respect to a PACE special assessment, and the provisions of
33 chapter 56 of Title 40 of the Revised Statutes, or any other law, the
34 provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) shall control.²
35 (cf: P.L.2011, c.187, s.3)

36
37 ²**[15.] 6.²** Section 11 of P.L.1960, c.183 (C.40:37A-54) is
38 amended to read as follows:

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

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

1 rehabilitation, conversion, repair or alteration of buildings or
 2 facilities designed to provide decent, safe and sanitary dwelling
 3 units for persons of low and moderate income in need of housing,
 4 including the acquisition of land, equipment or other real or
 5 personal properties which the authority determines to be necessary,
 6 convenient or desirable appurtenances, all in accordance with the
 7 provisions of this act, as amended and supplemented, (j) planning,
 8 initiating and carrying out redevelopment projects for the
 9 elimination, and for the prevention of the development or spread of
 10 blighted, deteriorated or deteriorating areas and the disposition, for
 11 uses in accordance with the objectives of the redevelopment project,
 12 of any property or part thereof acquired in the area of such project,
 13 (k) any combination or combinations of the foregoing or following,
 14 and (l) subject to the prior approval of the Local Finance Board, the
 15 planning, design, acquisition, construction, improvement,
 16 renovation, installation, maintenance and operation of facilities or
 17 any other type of real or personal property within the county for a
 18 corporation or other person organized for any one or more of the
 19 purposes described in subsection a. of N.J.S.15A:2-1 except those
 20 facilities or any other type of real or personal property which can be
 21 financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et
 22 seq.) as amended. A county improvement authority shall also have
 23 as its purpose the pooling of loans for any local governmental units
 24 within the county or any beneficiary county that are refunding
 25 bonds in order to achieve more favorable interest rates and terms
 26 for those local governmental units. A county improvement
 27 authority shall also have as its purpose the implementation,
 28 management, oversight, administration, and financing of a PACE
 29 program, as defined in section 1 of P.L. , c. (C.) (pending
 30 before the Legislature as this bill).¹
 31 (cf: P.L.2002, c.42, s.8)

32
 33 ¹[4.] ²[6.1] ^{7.} Section 12 of P.L.1960, c.183 (C.40:37A-55) is
 34 amended to read as follows:

35 12. Every authority shall be a public body politic and corporate
 36 constituting a political subdivision of the State established as an
 37 instrumentality exercising public and essential governmental
 38 functions to provide for the public convenience, benefit and welfare
 39 and shall have perpetual succession and, for the effectuation of its
 40 purposes, have the following additional powers:

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

43 (b) To sue and be sued;

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

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

1 (e) Subject to the provisions of section 26 of **【this act】**
2 P.L.1960, c.183 (C.40:37A-69) , to acquire by purchase, gift,
3 condemnation or otherwise, or lease as lessee, real property and
4 easements or interests therein necessary or useful and convenient
5 for the purposes of the authority, whether subject to mortgages,
6 deeds of trust or other liens or otherwise, and to hold and to use the
7 same, and to dispose of property so acquired no longer necessary
8 for the purposes of the authority; provided that the authority may
9 dispose of such property at any time to any governmental unit or
10 person if the authority shall receive a leasehold interest in the
11 property for such term as the authority deems appropriate to fulfill
12 its purposes;

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

18 (g) To enter into agreements to lease, as lessee, public facilities
19 for such term and under such conditions as the authority may deem
20 necessary and desirable to fulfill its purposes, and to agree,
21 pursuant thereto, to be unconditionally obligated to make payments
22 for the term of the lease, without set-off or counterclaim, whether or
23 not the public facility is completed, operating or operable, and
24 notwithstanding the destruction of, damage to, or suspension,
25 interruption, interference, reduction or curtailment of the
26 availability or output of the public facility to which the agreement
27 applies;

28 (h) To extend credit or make loans to any governmental unit or
29 person for the planning, design, acquisition, construction, equipping
30 and furnishing of a public facility, upon the terms and conditions
31 that the loans be secured by loan and security agreements,
32 mortgages, leases and other instruments, the payments on which
33 shall be sufficient to pay the principal of and interest on any bonds
34 issued for the purpose by the authority, and upon such other terms
35 and conditions as the authority shall deem reasonable;

36 (i) Subject to the provisions of section 13 of **【this act】** P.L.1960,
37 c.183 (C.40:37A-56) , to make agreements of any kind with any
38 governmental unit or person for the use or operation of all or any
39 part of any public facility for such consideration and for such period
40 or periods of time and upon such other terms and conditions as it
41 may fix and agree upon;

42 (j) (1) To borrow money and issue negotiable bonds or notes or
43 other obligations and provide for and secure the payment of any
44 bonds and the rights of the holders thereof, and to purchase, hold
45 and dispose of any bonds;

46 (2) To issue bonds, notes or other obligations to provide funding
47 ¹【to a municipality , or to an entity serving as the municipality's
48 administrator, that finances the purchase and installation of water

1 conservation projects, flood resistant construction projects,
2 hurricane resistant construction projects, storm shelter projects, safe
3 room projects, renewable energy systems , and energy efficiency
4 improvements] for the implementation of PACE projects¹ by
5 property owners as provided in section 2 of P.L.2011, c.187
6 (C.40:56-13.1) ¹, and to manage, oversee, administer, implement,
7 and finance PACE programs pursuant to subsection b. of section 2
8 of P.L.2011, c.187 (C.40:56-13.1)¹ ;

9 (k) To apply for and to accept gifts or grants of real or personal
10 property, money, material, labor or supplies for the purposes of the
11 authority from any governmental unit or person, and to make and
12 perform agreements and contracts and to do any and all things
13 necessary or useful and convenient in connection with the
14 procuring, acceptance or disposition of such gifts or grants;

15 (l) To determine the location, type and character of any public
16 facility and all other matters in connection with all or any part of
17 any public facility which it is authorized to own, construct,
18 establish, effectuate or control;

19 (m) To make and enforce bylaws or rules and regulations for the
20 management and regulation of its business and affairs and for the
21 use, maintenance and operation of any public facility, and to amend
22 the same;

23 (n) To do and perform any acts and things authorized by ²[this
24 act] the "county improvement authorities law," P.L.1960, c.183
25 (C.40:37A-44 et seq.),² under, through or by means of its own
26 officers, agents and employees, or by contract with any
27 governmental unit or person;

28 (o) To acquire, purchase, construct, lease, operate, maintain and
29 undertake any project and to fix and collect facility charges for the
30 use thereof;

31 (p) To mortgage, pledge or assign or otherwise encumber all or
32 any portion of its revenues and other income, real and personal
33 property, projects and facilities for the purpose of securing its
34 bonds, notes and other obligations or otherwise in furtherance of the
35 purpose of ²[this act] the "county improvement authorities law,"
36 P.L.1960, c.183 (C.40:37A-44 et seq.)²;

37 (q) To extend credit or make loans to redevelopers for the
38 planning, designing, acquiring, constructing, reconstructing,
39 improving, equipping and furnishing any redevelopment project or
40 redevelopment work;

41 (r) To conduct examinations and investigations, hear testimony
42 and take proof, under oath at public or private hearings of any
43 material matter, require the attendance of witnesses and the
44 production of books and papers and issue commissions for the
45 examination of witnesses who are out of the State, unable to attend,
46 or excused from attendance;

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

7 (t) To enter into any and all agreements or contracts, execute
8 any and all instruments, and do and perform any and all acts or
9 things necessary, convenient or desirable for the purposes of the
10 authority or to carry out any power expressly given in ²**[this act]**
11 the "county improvement authorities law," P.L.1960, c.183
12 (C.40:37A-44 et seq.),² subject to the "Local Public Contracts
13 Law," P.L.1971, c.198 (C.40A:11-1 et seq.); and

14 (u) To pool loans for any local governmental units within the
15 county or any beneficiary county that are refunding bonds and do
16 and perform any and all acts or things necessary, convenient or
17 desirable for the purpose of the authority to achieve more favorable
18 interest rates and terms for those local governmental units.
19 (cf: P.L.2011, c.187, s.4)

20

21 ¹**[5.]** ²**[7.1]** §.² This act shall take effect ¹**[on the first day of**
22 **the fourth month next following enactment, but the Director of the**
23 **Division of Local Government Services in the Department of**
24 **Community Affairs may take such anticipatory action in advance**
25 **thereof as shall be necessary for the implementation of this act]**
26 immediately¹.