

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 1611

STATE OF NEW JERSEY

DATED: MAY 21, 2018

The Senate Environment and Energy Committee favorably reports Senate Bill No. 1611.

This bill authorizes municipalities to provide for the financing of renewable energy systems, energy produced by such systems, energy efficiency improvements, energy storage, microgrids, district heating and cooling systems, water conservation, storm shelter construction, and flood and hurricane resistance projects through the use of voluntary special assessments on real property, thereby expanding the "clean energy special assessment," established by P.L.2011, c.187 (C.40:56-1.4 et al.), and renaming it the "PACE special assessment," using the acronym for the term "property assessed clean energy." Under the bill, owners of industrial, agricultural, commercial, or residential property with five or more dwelling units, and property owned by a tax-exempt or nonprofit entity such as a school, hospital, institution of higher education, or religious institution may participate in the program.

Under current law, 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. The only projects currently eligible for this program are installations of renewable energy systems and energy efficiency improvements. The bill would expand the class of eligible projects and the financing methods under a municipal PACE program and would eliminate the requirement for approval of the program by the Director of the Division of Local Government Services. The bill requires that five years after the enactment of the bill into law, the Director of the Division of Local Government Services must prepare and transmit a report that reviews and assesses all PACE programs operating in the State.

Under the bill, a PACE project may include the purchase, lease, or installation, or any combination thereof, of renewable energy systems or the energy produced by such systems, energy efficiency improvements, energy storage projects, water conservation projects,

flood resistant construction projects, hurricane resistant construction projects, storm shelter projects, and safe room projects. A PACE project may also include the participation by property owners in a microgrid or district heating and cooling system provided that each property owner's participation contractually continues for the duration of the PACE special assessment, as those systems are not affixed to the property.

The bill requires the municipality to adopt an ordinance to establish and implement a PACE program. The municipal ordinance would be required to establish a form of special assessment agreement to be entered into with PACE program participants, and identify whether the PACE program will be implemented, financed, and managed by the municipality, county, county improvement authority, or another public entity or private entity. The ordinance establishing the program is required to prescribe criteria for participation in the PACE program at the time of the initial financing. The criteria must include, at a minimum, (1) 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, and (2) 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. The municipal ordinance must also require an appraisal 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 the maximum duration of a PACE special assessment may not exceed 30 years. The ordinance must also require that a disclosure form summarizing PACE financing risks be provided by the PACE program administrator and the lender and must be signed by the owner of the property. The disclosure must also include, but need not be limited to, disclosure of risks from incorrect or defective improvement design or construction of the PACE project, the risk of foreclosure for failure to pay the special assessment, the imposition of charges or other enforcement for delinquent PACE special assessment payments in the same manner as delinquent real estate taxes, the lack of guarantee of energy savings from the PACE project, the likelihood that completed PACE projects may require ongoing maintenance to meet performance targets, the probability that changes in property occupancy or energy costs may affect energy savings expected from the project, the lack of guarantee by the PACE program or PACE program administrator of availability of local, State, or federal tax credits or other incentives, and the amount of additional fees for actual municipal costs that will be added to the PACE special assessment. The bill also requires that

the municipal ordinance require that the PACE program include certain consumer protection provisions.

This bill permits municipalities to issue bonds upon terms set forth in the ordinance. However, the bill provides that no such funding can be guaranteed by the full faith and credit of the municipality, or any other public entity. The bill also allows a municipality to designate a county, county improvement authority, another public entity, or one or more private entities to implement a PACE program on behalf of a municipality. When so designated to a public entity, the bill would further authorize the public entity to designate a private entity to develop, implement, administer, or finance the PACE program. The bill provides that any agreement between a municipality, county, county improvement authority, or other public entity, and a private entity would be subject to the "Local Public Contracts Law."

Under the bill, an entity that implements the program may issue bonds to fund PACE projects. The bill provides that the PACE special assessment imposed would constitute a single continuous first lien on the property paramount to all prior liens except subsequent taxes or assessments. If payment of the special assessment is not made, it is treated in the same manner as unpaid property taxes. However, the bill provides that 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 PACE program, service of the complaint on all parties must be made by personal service, hand-delivered by the sheriff or personal process server, and the procedure for obtaining a final judgment must conform to the procedures and requirements of the In Personam foreclosure process. Under the bill, the PACE special assessment may be assigned by the municipality, or other entity administering the PACE program, and the assignment would transfer all of the municipality's rights, title, and interest in the PACE special assessment, as well as the rights and remedies under any special assessment agreement.

Finally, the bill provides for the expiration of all PACE programs 10 years after the date of enactment of the bill into law.