

ASSEMBLY, No. 1902

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

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District 33 (Hudson)

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District 29 (Essex)

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SYNOPSIS

Authorizes municipalities to establish program for public or private financing of certain energy, water, and storm resiliency projects under PACE program through use of voluntary special assessments for certain property owners.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the implementation of renewable energy and
2 energy efficiency systems and water conservation, storm shelter
3 construction, flood and hurricane resistance projects, energy
4 storage, microgrids, and district heating and cooling system
5 projects, amending P.L.1960, c.183, and amending and
6 supplementing P.L.2011, c.187.

7

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

10

11 1. (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
16 conserving natural resources and mitigating the effects of floods
17 and hurricanes, and is financially beneficial over time; and upfront
18 costs are 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, results in property owners saving a significant sum in
22 energy costs, helps communities create local jobs, results in lower
23 mortgage foreclosures, and stimulates local economies and lower
24 emissions; and

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

29

30 2. (New section) As used in P.L.2011, c.187 (C.40:56-1.4 et
31 al.):

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

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

38 "District heating and cooling system" means a local piping
39 system that provides hot water, steam, or chilled water from one or
40 more sources to multiple buildings.

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

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.

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

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.

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

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

22 "PACE" is an acronym for the term "property assessed clean
23 energy."

24 "PACE project" means (1) the purchase, lease, or installation, or
25 any combination thereof, of renewable energy systems or the energy
26 produced by such systems, energy efficiency improvements, energy
27 storage, water conservation projects, flood resistant construction
28 projects, hurricane resistant construction projects, storm shelter
29 projects, or safe room projects which are undertaken by property
30 owners within a municipality and permanently affixed to each
31 participating property, and in the case of a lease, continue for the
32 duration of the PACE special assessment, or (2) participation by
33 property owners within the municipality in a microgrid or district
34 heating and cooling system provided that each property owner's
35 participation contractually continues for the duration of the PACE
36 special assessment.

37 "PACE program" means a program established by a municipality
38 by ordinance, providing for the imposition of PACE special
39 assessments on properties within the municipality, in which the
40 owner of such property has requested the PACE special assessment.

41 "PACE special assessment" means a local improvement
42 assessment, in accordance with chapter 56 of Title 40 of the
43 Revised Statutes, to be imposed on a property in connection with a
44 PACE project.

45 "Private entity" means a private for-profit or non-profit
46 corporation, partnership, or any other form of private organization,
47 including but not limited to a "related competitive business segment
48 of a public utility holding company," or a "related competitive

1 business segment of an electric public utility or gas public utility,"
2 as defined under section 3 of P.L.1999, c.23 (C.48:3-51), so long as
3 the organization is not subject to the jurisdiction of the Board of
4 Public Utilities.

5 "Project costs" mean the costs associated with a PACE project,
6 and shall be deemed to include: the hard costs of leasing,
7 purchasing, constructing or acquiring the project; soft costs,
8 including but not limited to engineering fees, inspection fees and
9 permits, and costs relating to the measurement and verification of
10 project savings; costs of utilizing the PACE program, including but
11 not limited to program fees, closing costs, and interest and other
12 financing charges; and bond issuance costs, including but not
13 limited to professional fees and the costs of funding capitalized
14 interest, if any, or a debt service reserve fund, if any.

15 "Property" means an industrial, agricultural, or commercial
16 property, residential property with five or more dwelling units, or
17 property owned by a tax-exempt or nonprofit entity including
18 schools, hospitals, institutions of higher education, or religious
19 institutions, within a municipality upon which a PACE special
20 assessment is imposed at the request of a property owner in
21 connection with a PACE project.

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

25 "Renewable energy system" means an improvement in which the
26 electrical, mechanical, or thermal energy is produced from a method
27 that uses one or more of the following fuels or energy sources:
28 hydrogen, solar energy, geothermal energy, bio-mass or wind
29 energy.

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

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

37 "Water conservation project" means an improvement that
38 reduces water consumption, increases the efficiency of water use, or
39 reduces water loss.

40

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

43 1. **【**Upon application to and approval by the Director of the
44 Division of Local Government Services in the Department of
45 Community Affairs, the**】** a. The governing body of a municipality
46 may adopt an ordinance to undertake the 【financing of the purchase
47 and installation of renewable energy system and energy efficiency
48 improvements】 development, implementation, administration, or

1 financing, or any combination thereof, of a PACE program. All
2 PACE programs shall expire 10 years from the date of enactment of
3 P.L. , c. (C.) (pending before the Legislature as this bill).
4 A municipality shall not adopt a PACE program, and no new PACE
5 special assessments may be imposed, 10 years after the date of
6 enactment of P.L. , c. (C.) (pending before the Legislature
7 as this bill), but any PACE special assessment properly imposed
8 during the 10-year period shall continue during and to the end of its
9 contractual period.

10 The PACE program shall consist of, among other things, the
11 implementation of PACE projects to be undertaken by property
12 owners as [a] local [improvement] improvements and [may
13 provide] the provision by ordinance for a ["clean energy] "PACE
14 special assessment" to be imposed on [a property] properties within
15 the municipality, if the owner of [the] a property requests the
16 PACE special assessment in order to [install such systems or
17 improvements] undertake a PACE project. [Each improvement]
18 PACE projects on an individual property subject to the same PACE
19 special assessment agreement collectively shall constitute a separate
20 local improvement and shall be assessed separately to the property
21 owner benefitted thereby. [The clean energy special assessment
22 shall be payable in quarterly installments. The terms of the clean
23 energy special assessment shall be in accordance with the terms of
24 the financing provided by the municipality pursuant to section 2 of
25 P.L.2011, c.187 (C.40:56-13.1).]

26 b. A municipality may designate a county, county improvement
27 authority, another public entity, or one or more private entities to
28 manage, oversee, administer, finance, or implement, or any
29 combination thereof, all or any part of the PACE program on the
30 municipality's behalf. To the extent that a county, county
31 improvement authority, or other public entity is designated to
32 manage, oversee, administer, finance, or implement, or any
33 combination thereof, all or any part of a PACE program on the
34 municipality's behalf, the county, county improvement authority, or
35 other public entity may designate one or more private entities to
36 manage, oversee, administer, finance, or implement, or any
37 combination thereof, all or any portion of such activities.

38 c. The director shall prepare within five years after the date of
39 enactment of P.L. , c. (C.) (pending before the Legislature as
40 this bill) a report that reviews and assesses all PACE programs
41 operating in the State. The report shall evaluate the PACE
42 programs in effect, and shall review foreclosure rates, cost-
43 effectiveness of PACE projects, reasonableness of costs to property
44 owners, and any other factors the director deems appropriate. The
45 report shall also identify and recommend any legislative changes to
46 the law authorizing the PACE program that may be necessary. The
47 report shall be posted on the Internet website of the Department of

1 Community Affairs and submitted, pursuant to section 2 of
2 P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

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

4

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

7 2. a. A county, county improvement authority, or other public
8 entity, or a private entity designated by a municipality or a county,
9 county improvement authority, or other public entity, pursuant to
10 subsection b. of section 1 of P.L.2011, c.187 (C.40:56-1.4) to
11 administer or implement a PACE program, may: administer
12 agreements between a private entity and property owners;
13 administer agreements between municipalities and property owners
14 pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2); administer
15 agreements involving county improvement authorities pursuant to
16 paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183
17 (C.40:37A-55); administer agreements involving private entities
18 that participate in the program; administer the sale of solar
19 renewable energy certificates from participating property owners;
20 and undertake any other appropriate responsibilities as set forth in
21 its agreement with the municipality, county, county improvement
22 authority, or other public entity, as applicable. Any contract
23 between the entity and a municipality, county, or county
24 improvement authority shall be subject to the “Local Public
25 Contracts Law, P.L.1971, c.198 (C.40A:11-1 et seq.).

26 b. A municipality may adopt an ordinance to undertake the
27 development, implementation, administration, or financing, or any
28 combination thereof, of a PACE program as provided in P.L.2011,
29 c.187 (C.40:56-1.4 et al.)

30 **【Upon application to and approval by the Director of Local**
31 **Government Services in the Department of Community Affairs, a**
32 **municipality may adopt an ordinance to establish a program to**
33 **finance the purchase and installation of renewable energy systems**
34 **and energy efficiency improvements by property owners.】**

35 c. The governing body of a municipality may apply to a
36 county, or to a county improvement authority that issues bonds
37 pursuant to paragraph (2) of subsection (j) of section 12 of
38 P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the
39 program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2).

40 (1) Notwithstanding any other law to the contrary, bonds issued
41 by a county or municipality shall be authorized and issued by
42 ordinance of such county or municipality, may be issued in one or
43 more series, on such additional terms and may be sold at public or
44 private sale, all as set forth in the ordinance.

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

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

5 (3) In addition, the municipal governing body, or the entity
6 serving as its administrator, may use funding through private
7 entities or public entities to finance the PACE program; provided
8 that no such funding shall be guaranteed or secured by the full faith
9 and credit of any public entity, including the State of New Jersey.
10 Funds for the **【purchase and installation of renewable energy**
11 **systems and energy efficiency improvements shall be loaned】**
12 implementation of PACE projects shall be made available to
13 property owners in exchange for a **【clean energy】 PACE special**
14 assessment on the property pursuant to section 1 of P.L.2011, c.187
15 (C.40:56-1.4) **【, to be paid quarterly】. **【In the case of financing****
16 provided by bonds issued by a county improvement authority, the
17 clean energy**】 The PACE special assessment shall be used to repay**
18 the **debt service on the bonds and the project costs.** **【In the case of**
19 financing provided by the municipality through the issuance of
20 municipal bonds, the clean energy special assessment shall be used
21 to repay the bonds.】

22 d. A property owner who **【purchases and】** installs a renewable
23 energy system under the program may also assign or transfer any
24 solar renewable energy certificates or other renewable energy
25 certificates or credits that accrue to the property owner from the
26 operation of the system to the municipality **【or】**, the county
27 improvement authority **【to repay the loan for the system】**, other
28 public entity, or the private entity, as applicable, which has financed
29 the PACE project. If any solar renewable energy certificates or
30 other renewable energy certificates or credits are assigned or
31 transferred to a municipality, county, county improvement
32 authority, other public entity, or private entity, the municipality,
33 county, county improvement authority, other public entity, or
34 private entity is authorized to sell, grant, assign, convey or
35 otherwise dispose of its interest in the certificates or credits to repay
36 the bonds or obligations and the project costs. **【The Director of**
37 Local Government Services in the Department of Community
38 Affairs shall coordinate efforts with the Board of Public Utilities to
39 ensure that the amount of financing made available by local
40 programs authorized pursuant to this act is in accordance with limits
41 set from time to time by the Board of Public Utilities in order to
42 ensure that local programs further the goals of the Office of Clean
43 Energy in the Board of Public Utilities.

44 b. As used in this section,

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

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

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

3 3. a. **【**Upon application to and approval by the Director of
4 Local Government Services in the Department of Community
5 Affairs, the governing body of a municipality may establish the
6 amounts of money to be expended by the municipality for the
7 improvements authorized in sections 1 and 2 of P.L.2011, c.187
8 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may
9 be raised by the issuance of clean energy special assessment bonds
10 by the municipality. In making the appropriation, the governing
11 body may designate the particular projects to be financed to which
12 the moneys shall be applied.**】** Notwithstanding any provision of
13 chapter 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.),
14 or any other law to the contrary, a municipality shall follow the
15 following process to establish and implement a PACE program:

16 (1) A municipality may adopt an ordinance pursuant to
17 R.S.40:49-2 to establish a PACE program. A municipal ordinance
18 establishing a PACE program may provide for eligibility
19 requirements for participation in the program and project
20 development guidelines for PACE projects.

21 (2) The municipal ordinance shall establish a form of special
22 assessment agreement to be entered into with PACE program
23 participants, and identify whether the PACE program will be
24 implemented, financed, and managed by the municipality, county,
25 or by a county improvement authority, or by another public entity
26 or private entity.

27 (3) The municipal ordinance shall prescribe criteria for
28 participation in the PACE program at the time of the initial
29 financing, which criteria shall include, at a minimum, the following:
30 (a) that PACE financing recipients are either the legal owners of the
31 underlying property or provide the written consent of the legal
32 owners of the underlying property, are current on mortgage and
33 property tax payments with respect to the underlying property, and
34 are not the subject of a default or in bankruptcy proceedings, and
35 (b) an appropriate ratio of the assessment to the value of the
36 property, but in no circumstance may the combination of a PACE
37 financing and the existing loan-to-value ratio on a property exceed
38 90 percent of the appraised value of the property including the
39 value of the PACE project. The municipal ordinance shall also
40 require that an appraisal shall be required if one is not conducted by
41 the lender for the PACE project. The ordinance may establish
42 standards for the maximum amount, or duration of PACE special
43 assessments, or both, but in no event shall the maximum duration of
44 a PACE special assessment exceed 30 years.

45 (4) The municipal ordinance shall require that a disclosure form
46 summarizing PACE financing risks provided by the PACE program
47 administrator and the lender shall be signed by the owner of each

- 1 property. The disclosure form shall include, but need not be limited
2 to, the following information:
- 3 (a) risks from incorrect or defective improvement design or
4 construction of the PACE project;
 - 5 (b) risk of foreclosure for failure to pay the special assessment;
 - 6 (c) imposition of charges or other enforcement for delinquent
7 PACE special assessment payments in the same manner as
8 delinquent real estate taxes;
 - 9 (d) lack of guarantee of energy savings from the PACE project;
 - 10 (e) likelihood that completed PACE projects may require
11 ongoing maintenance to meet performance targets;
 - 12 (f) probability that changes in property occupancy or energy
13 costs may affect energy savings expected from the project;
 - 14 (g) lack of guarantee by the PACE program or PACE program
15 administrator of availability of local, State, or federal tax credits or
16 other incentives; and
 - 17 (h) amount of additional fees for actual municipal costs that will
18 be added to the PACE special assessment.
- 19 (5) The municipal ordinance shall also require that the PACE
20 program include the following consumer protection provisions:
- 21 (a) the authority of the property owner to cancel the PACE
22 contract within three business days of signing it;
 - 23 (b) a requirement to provide information to the property owner
24 on the total cost of the PACE project for the life of the agreement
25 including interest or fees to be paid, total number of payments,
26 payment frequency, amount of each payment, and warranty or
27 maintenance obligations; and
 - 28 (c) a prohibition restricting specific monetary or percentage
29 estimates on property value changes as a result of the PACE
30 project.
- 31 b. **【Clean energy special assessments and bonds issued to**
32 **finance them shall be issued and shall be generally subject to**
33 **R.S.40:56-21 et seq., as the director shall determine to be**
34 **applicable.】 The amount of a PACE special assessment shall be a**
35 **specific amount, not to exceed the project costs of the PACE**
36 **project. The specific amount of a PACE special assessment, which**
37 **shall be consented to by the property owner by its execution of a**
38 **special assessment agreement in the form promulgated by the**
39 **municipality, shall be deemed the benefit conferred with respect to**
40 **the property and shall be in lieu of the amount being determined by**
41 **any other procedures contained in this Title otherwise applicable to**
42 **determining the actual benefit conferred on the property. No other**
43 **confirmation or determination of the amount of the PACE special**
44 **assessment, including, but not limited to the procedure set forth at**
45 **R.S.40:56-30, shall be required.**
- 46 c. **【The director is authorized and empowered to take such**
47 **action as deemed necessary and consistent with the intent of this act**
48 **to implement its provisions.】 Subject to the written consent of**

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

31 d. The funds to implement a PACE project may be disbursed to
32 the property owner at execution of the special assessment
33 agreement, or may be disbursed in installments over time. Such
34 funds shall not constitute public funds, and shall not be subject to
35 the laws governing public funds, including but not limited to laws
36 regarding the receipt, expenditure, deposit, investment or
37 appropriation of the same. PACE projects shall not be considered
38 "facilities" or "public facilities," within the meaning of the "county
39 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et
40 seq.). Payments of PACE special assessments shall be due on
41 February 1, May 1, August 1 and November 1 in each year, and
42 shall commence as set forth in the PACE special assessment
43 agreement. To the extent that upon completion of the PACE
44 project, funds remain which have not been disbursed to the property
45 owner for a PACE project, those funds on hand shall be used to
46 reduce the amount of the PACE special assessment.

47 e. Except as provided in subsection g. of this section, if any
48 payment of a PACE special assessment is not made within 10 days

1 after the time when that payment shall have become due, or later,
2 consistent with any grace period provided or extended by a
3 municipality for the payment of property tax bills, interest thereon
4 shall be imposed at the same rate as may be imposed upon unpaid
5 property taxes in the municipality, and collected and enforced in the
6 same manner as unpaid property taxes, including by accelerated tax
7 sale if the municipality shall enforce collection of its unpaid
8 property taxes through accelerated tax sale. However, the balance
9 due on PACE special assessments shall not be subject to
10 acceleration in the event of a default in payment. Notwithstanding
11 any other provision of law, in the event that any lien on the property
12 shall be exposed to tax sale, pursuant to the "tax sale law,"
13 R.S.54:5-1 et seq., and any such lien is struck off and sold to the
14 municipality, the PACE special assessment shall survive any
15 subsequent action to foreclose the right of redemption and continue
16 as a first lien upon the real estate described in the assessment,
17 paramount to all prior or subsequent alienations and descents of
18 such real estate or encumbrances thereon, except subsequent taxes
19 or assessments, and provided that, notwithstanding the
20 municipality's obligations pursuant to section 1 of P.L.1942, c.54
21 (C.54:5-53.1), while the municipality holds such lien or owns such
22 property, the municipality shall not be responsible for or required to
23 make any payment in furtherance of or to satisfy any such PACE
24 special assessment.

25 f. PACE special assessments may be assigned directly by the
26 municipality, and any assignee thereof, as security for the
27 repayment of:

28 (1) bonds or other obligations issued by the municipality, county
29 or the county improvement authority to finance the PACE projects,
30 and

31 (2) if a PACE project is financed by a public entity or private
32 entity, any obligations of a property owner with respect to such
33 PACE project to such private entity or public entity, or any assignee
34 thereof.

35 Notwithstanding any law to the contrary, the assignment shall be
36 an absolute assignment of all of the municipality's right, title and
37 interest in and to the PACE special assessment, along with the
38 rights and remedies provided to the municipality under the special
39 assessment agreement, including, but not limited to, the right to
40 direct the collection of payments due. PACE special assessments
41 assigned as provided hereunder shall not be included in the general
42 funds of the municipality, or be subject to any laws regarding the
43 receipt, deposit, investment or appropriation of public funds, and
44 shall retain such status notwithstanding enforcement of the
45 assessment by the municipality or assignee as provided herein. In
46 the case of a municipality which is otherwise subject to tax or
47 revenue sharing pursuant to law and which assigns PACE special
48 assessments as set forth in this section, such PACE special

1 assessments shall not be considered part of the tax or revenue
2 sharing formula or calculation of municipal revenues for the
3 purpose of determining whether that municipality is obligated to
4 make payment to, or receive a credit from, any tax sharing or
5 revenue sharing pool.

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

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

15

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

18 11. The purposes of every authority shall be (a) provision within
19 the county or any beneficiary county of public facilities for use by
20 the State, the county or any beneficiary county, or any municipality
21 in any such county, or any two or more or any subdivisions,
22 departments, agencies or instrumentalities of any of the foregoing
23 for any of their respective governmental purposes, (b) provision
24 within the county or any beneficiary county of public facilities for
25 use as convention halls, or the rehabilitation, improvement or
26 enlargement of any convention hall, including appropriate and
27 desirable appurtenances located within the convention hall or near,
28 adjacent to or over it within boundaries determined at the discretion
29 of the authority, including but not limited to office facilities,
30 commercial facilities, community service facilities, parking
31 facilities, hotel facilities and other facilities for the accommodation
32 and entertainment of tourists and visitors, (c) provision within the
33 county or any beneficiary county of structures, franchises,
34 equipment and facilities for operation of public transportation or for
35 terminal purposes, including development and improvement of port
36 terminal structures, facilities and equipment for public use in
37 counties in, along or through which a navigable river flows, (d)
38 provision within the county or any beneficiary county of structures
39 or other facilities used or operated by the authority or any
40 governmental unit in connection with, or relative to development
41 and improvement of, aviation for military or civilian purposes,
42 including research in connection therewith, and including structures
43 or other facilities for the accommodation of passengers, (e)
44 provision within the county or any beneficiary county of a public
45 facility for a combination of governmental and nongovernmental
46 uses; provided that not more than 50% of the usable space in any
47 such facility shall be made available for nongovernmental use under
48 a lease or other agreement by or with the authority, (f) acquisition

1 of any real property within the county or any beneficiary county,
2 with or without the improvements thereof or thereon or personal
3 property appurtenant or incidental thereto, from the United States of
4 America or any department, agency or instrumentality heretofore or
5 hereafter created, designated or established by or for it, and the
6 clearance, development or redevelopment, improvement, use or
7 disposition of the acquired lands and premises in accordance with
8 the provisions and for the purposes stated in **[this act]** the "county
9 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et
10 seq.), including the construction, reconstruction, demolition,
11 rehabilitation, conversion, repair or alteration of improvements on
12 or to said lands and premises, and structures and facilities incidental
13 to the foregoing as may be necessary, convenient or desirable, (g)
14 acquisition, construction, maintenance and operation of garbage and
15 solid waste disposal systems for the purpose of collecting and
16 disposing of garbage, solid waste or refuse matter, whether owned
17 or operated by any person, the authority or any other governmental
18 unit, within or without the county or any beneficiary county, (h) the
19 improvement, furtherance and promotion of the tourist industries
20 and recreational attractiveness of the county or any beneficiary
21 county through the planning, acquisition, construction,
22 improvement, maintenance and operation of facilities for the
23 recreation and entertainment of the public, which facilities may
24 include, without being limited to, a center for the performing and
25 visual arts, (i) provision of loans and other financial assistance and
26 technical assistance for the construction, reconstruction, demolition,
27 rehabilitation, conversion, repair or alteration of buildings or
28 facilities designed to provide decent, safe and sanitary dwelling
29 units for persons of low and moderate income in need of housing,
30 including the acquisition of land, equipment or other real or
31 personal properties which the authority determines to be necessary,
32 convenient or desirable appurtenances, all in accordance with the
33 provisions of this act, as amended and supplemented, (j) planning,
34 initiating and carrying out redevelopment projects for the
35 elimination, and for the prevention of the development or spread of
36 blighted, deteriorated or deteriorating areas and the disposition, for
37 uses in accordance with the objectives of the redevelopment project,
38 of any property or part thereof acquired in the area of such project,
39 (k) any combination or combinations of the foregoing or following,
40 and (l) subject to the prior approval of the Local Finance Board, the
41 planning, design, acquisition, construction, improvement,
42 renovation, installation, maintenance and operation of facilities or
43 any other type of real or personal property within the county for a
44 corporation or other person organized for any one or more of the
45 purposes described in subsection a. of N.J.S.15A:2-1 except those
46 facilities or any other type of real or personal property which can be
47 financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et
48 seq.) as amended. A county improvement authority shall also have

1 as its purpose the pooling of loans for any local governmental units
2 within the county or any beneficiary county that are refunding
3 bonds in order to achieve more favorable interest rates and terms
4 for those local governmental units. A county improvement
5 authority shall also have as its purpose the implementation,
6 management, oversight, administration, and financing of a PACE
7 program, as defined in section 2 of P.L. , c. (C.) (pending
8 before the Legislature as this bill).
9 (cf: P.L.2002, c.42, s.8)

10

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

13 12. Every authority shall be a public body politic and corporate
14 constituting a political subdivision of the State established as an
15 instrumentality exercising public and essential governmental
16 functions to provide for the public convenience, benefit and welfare
17 and shall have perpetual succession and, for the effectuation of its
18 purposes, have the following additional powers:

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

21 (b) To sue and be sued;

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

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

26 (e) Subject to the provisions of section 26 of **[this act]**
27 P.L.1960, c.183 (C.40:37A-69), to acquire by purchase, gift,
28 condemnation or otherwise, or lease as lessee, real property and
29 easements or interests therein necessary or useful and convenient
30 for the purposes of the authority, whether subject to mortgages,
31 deeds of trust or other liens or otherwise, and to hold and to use the
32 same, and to dispose of property so acquired no longer necessary
33 for the purposes of the authority; provided that the authority may
34 dispose of such property at any time to any governmental unit or
35 person if the authority shall receive a leasehold interest in the
36 property for such term as the authority deems appropriate to fulfill
37 its purposes;

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

43 (g) To enter into agreements to lease, as lessee, public facilities
44 for such term and under such conditions as the authority may deem
45 necessary and desirable to fulfill its purposes, and to agree,
46 pursuant thereto, to be unconditionally obligated to make payments
47 for the term of the lease, without set-off or counterclaim, whether or
48 not the public facility is completed, operating or operable, and

1 notwithstanding the destruction of, damage to, or suspension,
2 interruption, interference, reduction or curtailment of the
3 availability or output of the public facility to which the agreement
4 applies;

5 (h) To extend credit or make loans to any governmental unit or
6 person for the planning, design, acquisition, construction, equipping
7 and furnishing of a public facility, upon the terms and conditions
8 that the loans be secured by loan and security agreements,
9 mortgages, leases and other instruments, the payments on which
10 shall be sufficient to pay the principal of and interest on any bonds
11 issued for the purpose by the authority, and upon such other terms
12 and conditions as the authority shall deem reasonable;

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

19 (j) (1) To borrow money and issue negotiable bonds or notes or
20 other obligations and provide for and secure the payment of any
21 bonds and the rights of the holders thereof, and to purchase, hold
22 and dispose of any bonds;

23 (2) To issue bonds, notes or other obligations to provide funding
24 **[to a municipality that finances the purchase and installation of**
25 **renewable energy systems and energy efficiency improvements]** for
26 the implementation of PACE projects by property owners as
27 provided in section 2 of P.L.2011, c.187 (C.40:56-13.1), and to
28 manage, oversee, administer, finance, or implement, or any
29 combination thereof, all or any part of a PACE program pursuant to
30 subsection b. of section 2 of P.L.2011, c.187 (C.40:56-13.1);

31 (k) To apply for and to accept gifts or grants of real or personal
32 property, money, material, labor or supplies for the purposes of the
33 authority from any governmental unit or person, and to make and
34 perform agreements and contracts and to do any and all things
35 necessary or useful and convenient in connection with the
36 procuring, acceptance or disposition of such gifts or grants;

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

41 (m) To make and enforce bylaws or rules and regulations for the
42 management and regulation of its business and affairs and for the
43 use, maintenance and operation of any public facility, and to amend
44 the same;

45 (n) To do and perform any acts and things authorized by **[this**
46 **act]** the "county improvement authorities law," P.L.1960, c.183
47 (C.40:37A-44 et seq.), under, through or by means of its own

1 officers, agents and employees, or by contract with any
2 governmental unit or person;

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

6 (p) To mortgage, pledge or assign or otherwise encumber all or
7 any portion of its revenues and other income, real and personal
8 property, projects and facilities for the purpose of securing its
9 bonds, notes and other obligations or otherwise in furtherance of the
10 purpose of **【this act】** the "county improvement authorities law,"
11 P.L.1960, c.183 (C.40:37A-44 et seq.);

12 (q) To extend credit or make loans to redevelopers for the
13 planning, designing, acquiring, constructing, reconstructing,
14 improving, equipping and furnishing any redevelopment project or
15 redevelopment work;

16 (r) To conduct examinations and investigations, hear testimony
17 and take proof, under oath at public or private hearings of any
18 material matter, require the attendance of witnesses and the
19 production of books and papers and issue commissions for the
20 examination of witnesses who are out of the State, unable to attend,
21 or excused from attendance;

22 (s) To authorize a committee designated by it consisting of one
23 or more members, or counsel, or any officer or employee to conduct
24 any such investigation or examination, in which case such
25 committee, counsel, officer or employee shall have power to
26 administer oaths, take affidavits and issue subpoenas or
27 commissions;

28 (t) To enter into any and all agreements or contracts, execute
29 any and all instruments, and do and perform any and all acts or
30 things necessary, convenient or desirable for the purposes of the
31 authority or to carry out any power expressly given in **【this act】** the
32 "county improvement authorities law," P.L.1960, c.183 (C.40:37A-
33 44 et seq.), subject to the "Local Public Contracts Law," P.L.1971,
34 c.198 (C.40A:11-1 et seq.); and

35 (u) To pool loans for any local governmental units within the
36 county or any beneficiary county that are refunding bonds and do
37 and perform any and all acts or things necessary, convenient or
38 desirable for the purpose of the authority to achieve more favorable
39 interest rates and terms for those local governmental units.

40 (cf: P.L.2011, c.187, s.4)

41

42 8. This act shall take effect immediately.

43

44

45

STATEMENT

46

47 This bill authorizes municipalities to provide for public or private
48 financing of (1) renewable energy systems, energy produced by such

1 systems, energy efficiency improvements, energy storage, water
2 conservation, storm shelter construction, and flood and hurricane
3 resistance projects permanently affixed to each property, and (2)
4 microgrids and district heating and cooling systems, which are not
5 affixed to each property, provided that the property owner's
6 participation contractually continues for the duration of the special
7 assessment. These projects would be financed by voluntary special
8 assessments on real property, thereby expanding the "clean energy
9 special assessment," established by P.L.2011, c.187 (C.40:56-1.4 et
10 al.), and renaming it the "PACE special assessment," using the
11 acronym for the term "property assessed clean energy." Under the bill,
12 owners of industrial, agricultural, commercial, residential property
13 with five or more dwelling units, and property owned by a tax-exempt
14 or nonprofit entity such as a school, hospital, institution of higher
15 education, or religious institution may participate in the program.

16 Under current law, the governing body of a municipality, upon
17 application to and approval by the Director of the Division of Local
18 Government Services in the Department of Community Affairs, may
19 undertake the financing of the purchase and installation of renewable
20 energy systems and energy efficiency improvements made by property
21 owners. By ordinance, the municipality may provide for a "clean
22 energy special assessment" to be imposed on those properties when the
23 property owner has requested the assessment in exchange for receiving
24 assistance with the initial financing. The only projects currently
25 eligible for this program are installations of renewable energy systems
26 and energy efficiency improvements. The bill expands the class of
27 eligible projects and the financing methods under a municipal PACE
28 program but removes the requirement that a municipality that adopts
29 a PACE program must obtain approval from the Director of the
30 Division of Local Government Services.

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

43 Under the bill, an entity that implements the program may issue
44 bonds to fund PACE projects. The proceeds would be used to repay
45 the debt service on the bonds and pay the projects' costs. The bill
46 provides that the PACE special assessment imposed will constitute a
47 single continuous first lien on the property paramount to all prior liens
48 except subsequent taxes or assessments. If payment of the special

1 assessment is not made, it is treated in the same manner as unpaid
2 property taxes. Under the bill, the PACE special assessment may be
3 assigned by the municipality, or other entity administering the PACE
4 program, and the assignment transfers all of the municipality's rights,
5 title, and interest in the PACE special assessment, as well as the rights
6 and remedies under any special assessment agreement.

7 The bill requires that a municipal ordinance: (1) prescribe
8 criteria for participation at the time of initial funding, including an
9 appropriate ratio of the assessment to the value of the property; (2)
10 require that a risk disclosure form summarizing PACE financing
11 risks, including the risk of foreclosure, be provided to each
12 participating property owner; and (3) require the inclusion of
13 certain consumer protection provisions.

14 Finally, the bill would also provide for the expiration of all
15 PACE programs 10 years after the date of enactment of the bill into
16 law. Five years after the enactment of the bill into law, the Director
17 of the Division of Local Government Services must prepare and
18 transmit a report that reviews and assesses all PACE programs
19 operating in the State.