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

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

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

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

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

"PACE project” means (1) 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, water conservation projects, flood resistant construction projects, hurricane resistant construction projects, storm shelter projects, or safe room projects which are undertaken by property owners within a municipality and permanently affixed to each participating property, and in the case of a lease, continue for the duration of the PACE special assessment, or (2) participation by property owners within the municipality 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.

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

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

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

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

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

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

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

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

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

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

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

1. [Upon application to and approval by the Director of the Division of Local Government Services in the Department of Community Affairs, the] a. The governing body of a municipality may adopt an ordinance to undertake the [financing of the purchase and installation of renewable energy system and energy efficiency improvements] development, implementation, administration, or
financing, or any combination thereof, of a PACE program. All
PACE programs shall expire 10 years from the date of enactment of
P.L. , c. (C. ) (pending before the Legislature as this bill).
A municipality shall not adopt a PACE program, and no new PACE
special assessments may be imposed, 10 years after the date of
enactment of P.L. , c. (C. ) (pending before the Legislature
as this bill), but any PACE special assessment properly imposed
during the 10-year period shall continue during and to the end of its
contractual period.
The PACE program shall consist of, among other things, the
implementation of PACE projects to be undertaken
by property
owners as [a] local [improvement] improvements and [may
provide] the provision by ordinance for a ["clean energy"] PACE
special assessment” to be imposed on [a property] properties within
the municipality, if the owner of [the] a property requests the
PACE special assessment in order to [install such systems or
improvements] undertake a PACE project. [Each improvement] PACE projects on an individual property subject to the same PACE
special assessment agreement collectively shall constitute a separate
local improvement and shall be assessed separately to the property
owner benefitted thereby. [The clean energy special assessment
shall be payable in quarterly installments. The terms of the clean
energy special assessment shall be in accordance with the terms of
the financing provided by the municipality pursuant to section 2 of
b. A municipality may designate a county, county improvement
authority, another public entity, or one or more private entities to
manage, oversee, administer, finance, or implement, or any
combination thereof, all or any part of the PACE program on the
municipality’s behalf. To the extent that a county, county
improvement authority, or other public entity is designated to
manage, oversee, administer, finance, or implement, or any
combination thereof, all or any part of a PACE program on the
municipality’s behalf, the county, county improvement authority, or
other public entity may designate one or more private entities to
manage, oversee, administer, finance, or implement, or any
combination thereof, all or any portion of such activities.
c. The director shall prepare within five years after the date of
enactment of P.L. , c. (C. ) (pending before the Legislature as
this bill) a report that reviews and assesses all PACE programs
operating in the State. The report shall evaluate the PACE
programs in effect, and shall review foreclosure rates, cost-
effectiveness of PACE projects, reasonableness of costs to property
owners, and any other factors the director deems appropriate. The
report shall also identify and recommend any legislative changes to
the law authorizing the PACE program that may be necessary. The
report shall be posted on the Internet website of the Department of
Community Affairs and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

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

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

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

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

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

(2) A county improvement authority or other public entity shall be non-recourse obligations of such issuer and shall not be a general obligation of such issuer, or the State of New Jersey.
(b) Bonds issued by a county improvement authority shall be authorized and issued in the manner set forth in the "county improvement authorities law." P.L.1960, c.183 (C.40:37A-44 et seq.).

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

d. A property owner who [purchases and] installs a renewable energy system under the program may also assign or transfer any solar renewable energy certificates or other renewable energy certificates or credits that accrue to the property owner from the operation of the system to the municipality [or], the county improvement authority [to repay the loan for the system], other public entity, or the private entity, as applicable, which has financed the PACE project. If any solar renewable energy certificates or other renewable energy certificates or credits are assigned or transferred to a municipality, county, county improvement authority, other public entity, the municipality, county, county improvement authority, other public entity, or private entity is authorized to sell, grant, assign, convey or otherwise dispose of its interest in the certificates or credits to repay the bonds or obligations and the project costs. [The Director of Local Government Services in the Department of Community Affairs shall coordinate efforts with the Board of Public Utilities to ensure that the amount of financing made available by local programs authorized pursuant to this act is in accordance with limits set from time to time by the Board of Public Utilities in order to ensure that local programs further the goals of the Office of Clean Energy in the Board of Public Utilities.]

b. As used in this section, "solar renewable energy certificate" shall have the same meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).] (cf: P.L.2011, c.187, s.2)
5. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to read as follows:

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

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

   (2) The municipal ordinance shall 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, or by a county improvement authority, or by another public entity or private entity.

   (3) The municipal ordinance shall prescribe criteria for participation in the PACE program at the time of the initial financing, which criteria shall include, at a minimum, the following:

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

   (b) an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project. The municipal ordinance shall also require that an appraisal shall be required if one is not conducted by the lender for the PACE project. The ordinance may establish standards for the maximum amount, or duration of PACE special assessments, or both, but in no event shall the maximum duration of a PACE special assessment exceed 30 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

b. [Clean energy special assessments and bonds issued to
finance them shall be issued and shall be generally subject to
R.S.40:56-21 et seq., as the director shall determine to be
applicable.] The amount of a PACE special assessment shall be a
specific amount, not to exceed the project costs of the PACE
project. The specific amount of a PACE special assessment, which
shall be consented to by the property owner by its execution of a
special assessment agreement in the form promulgated by the
municipality, shall be deemed the benefit conferred with respect to
the property and shall be in lieu of the amount being determined by
any other procedures contained in this Title otherwise applicable to
determining the actual benefit conferred on the property. No other
confirmation or determination of the amount of the PACE special
assessment, including, but not limited to the procedure set forth at
R.S.40:56-30, shall be required.

c. [The director is authorized and empowered to take such
action as deemed necessary and consistent with the intent of this act
to implement its provisions.] Subject to the written consent of
existing mortgage holders, a PACE special assessment shall be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded, on and after the date of recordation of the agreement. Upon recordation of the PACE special assessment agreement in the land records of the county in which the property is located, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, without any additional notice, recording, filing, continuation filing or action, until payment in full of the PACE special assessment, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any other proceeding which does not impair the substantial rights of the owner or owners or other person or persons having a lien upon or interest in any such real estate. Any confirmation of the amount of the assessment by the governing body or by the court shall be considered as determining the amount of the existing lien and not as establishing the lien. All assessments shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown. A PACE special assessment shall not be considered an "equivalent consensual security interest" for the purposes of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.). PACE special assessments shall be treated as municipal liens rather than contractual liens for all purposes of law.

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

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

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

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

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

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

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

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

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

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50% of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition
of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in [this act] the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of this act, as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:21-1 et seq.) as amended. A county improvement authority shall also have
as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units. A county improvement authority shall also have as its purpose the implementation, management, oversight, administration, and financing of a PACE program, as defined in section 2 of P.L. , c. ( ) (pending before the Legislature as this bill).

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

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

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

(a) To adopt and have a common seal and to alter the same at pleasure;
(b) To sue and be sued;
(c) To acquire, hold, use and dispose of its facility charges and other revenues and other moneys;
(d) To acquire, rent, hold, use and dispose of other personal property for the purposes of the authority;
(e) Subject to the provisions of section 26 of [this act] P.L.1960, c.183 (C.40:37A-69), to acquire by purchase, gift, condemnation or otherwise, or lease as lessee, real property and easements or interests therein necessary or useful and convenient for the purposes of the authority, whether subject to mortgages, deeds of trust or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the authority; provided that the authority may dispose of such property at any time to any governmental unit or person if the authority shall receive a leasehold interest in the property for such term as the authority deems appropriate to fulfill its purposes;
(f) Subject to the provisions of section 13 of [this act] P.L.1960, c.183 (C.40:37A-56), to lease to any governmental unit or person, all or any part of any public facility for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon;
(g) To enter into agreements to lease, as lessee, public facilities for such term and under such conditions as the authority may deem necessary and desirable to fulfill its purposes, and to agree, pursuant thereto, to be unconditionally obligated to make payments for the term of the lease, without set-off or counterclaim, whether or not the public facility is completed, operating or operable, and
notwithstanding the destruction of, damage to, or suspension, 
interruption, interference, reduction or curtailment of the 
availability or output of the public facility to which the agreement 
applies;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. This act shall take effect immediately.

STATEMENT

This bill authorizes municipalities to provide for public or private
financing of (1) renewable energy systems, energy produced by such
systems, energy efficiency improvements, energy storage, water conservation, storm shelter construction, and flood and hurricane resistance projects permanently affixed to each property, and (2) microgrids and district heating and cooling systems, which are not affixed to each property, provided that the property owner’s participation contractually continues for the duration of the special assessment. These projects would be financed by 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, 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 expands the class of eligible projects and the financing methods under a municipal PACE program but removes the requirement that a municipality that adopts a PACE program must obtain approval from the Director of the Division of Local Government Services.

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 authorizes the public entity to designate a private entity to develop, implement, administer, or finance a PACE program. The bill provides that any agreement between a municipality, county, county improvement authority, or other public entity, and a private entity is subject to the "Local Public Contracts Law.”

Under the bill, an entity that implements the program may issue bonds to fund PACE projects. The proceeds would be used to repay the debt service on the bonds and pay the projects’ costs. The bill provides that the PACE special assessment imposed will 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. Under the bill, the PACE special assessment may be
assigned by the municipality, or other entity administering the PACE
program, and the assignment transfers 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.

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

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