ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2374



STATE OF NEW JERSEY

219th LEGISLATURE

 ADOPTED JULY 20, 2020

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Environment and Solid Waste Committee.



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

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

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

a. Investing in water conservation, stormwater management, renewable energy, energy efficiency, and flood and hurricane mitigation improvements to real property is a critical component in conserving natural resources and mitigating the effects of floods and hurricanes;

b. The up-front costs of retrofitting properties with these improvements are often a barrier to investing in such improvements, and the additional cost of meeting new code requirements in connection with new construction is a deterrent to the investments;

c. Recent studies have demonstrated that the existing financing options for these projects have not made them sufficiently available to property owners and developers;

d. Property assessed clean energy (“PACE”) financing, in which repayment is made by way of a special assessment on the real property to which the improvement is made, is an innovative way for property owners to finance or refinance renewable energy, energy and water efficiency, and other eligible improvements which, in turn, saves a significant sum in utility costs or insurance premiums, creates jobs, stimulates local economies, reduces greenhouse gas emissions, and improves the safely and quality of the building stock;

e. To date, PACE programs for commercial properties (“C-PACE”) operate in 24 other states and the District of Columbia, and they have facilitated more than $1.5 billion in investment in over 2,100 C-PACE projects;

f. C-PACE financing will enable New Jersey municipalities to contribute toward their goals of community sustainability and reducing greenhouse gas emissions and energy consumption, and will provide a valuable service to the citizens of their communities; and

g. C-PACE financing serves a valid public purpose and enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) is expressly declared to be in the public interest.

2. (New section) As used in sections 1 through 9 of P.L. , c.   (C. ) (pending before the Legislature as this bill):

“Administration agreement” means an agreement between the authority and a participating municipality defining the obligations of a municipality to participate in the Garden State C-PACE program, including the requirement that the participating municipality levy, bill, collect, remit, and enforce a C-PACE assessment.

“Assignment agreement” means an agreement in which a participating municipality assigns a C-PACE assessment agreement to a capital provider, its designee, successor or assign.

“Authority” means the New Jersey Economic Development Authority.

“Capital provider” means:

a. an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R.230.501 through 230.508) or Rule 144A (17 C.F.R.230.144A) of the federal “Securities Act of 1933” (15 U.S.C. s.77a et seq.), as amended;

b. the trustee or custodian of a trust or custody arrangement which provides that each beneficial owner of interests shall be an accredited investor or qualified institutional buyer;

c. a public entity; or

d. a special purpose securitization vehicle for the sale and transfer of securities, which is restricted to those persons described in subsections a. or b. of this definition.

“C-PACE” means commercial property assessed clean energy.

“C-PACE assessment” means a local improvement assessment, in accordance with chapter 56 of Title 40 of the Revised Statutes, imposed by a participating municipality on a property, with the consent of the owner of the property, as a means of securing financing provided pursuant to section 9 of P.L. , c. (C ) (pending before the Legislature as this bill) to finance a C-PACE project at the property, payments in respect of which assessment are collected by the participating municipality and remitted to the entity that provided the financing or its designee.

“C-PACE assessment agreement” means an agreement between a participating municipality and a property owner in which the property owner agrees to the imposition of a C-PACE assessment on the property benefited by a C-PACE project within the municipality, and by which the participating municipality agrees to levy, bill, collect, remit, and enforce the C-PACE assessment.

“C-PACE project” means:

a. the acquisition, construction, lease, installation, or modification of an energy efficiency improvement or renewable energy system including energy storage, microgrid, water conservation improvement, stormwater management system, electric vehicle charging infrastructure, flood resistant construction improvement, or hurricane resistant construction improvement, in each case affixed to a property, including new construction of the improvements, within a participating municipality;

b. a microgrid or district heating and cooling system in which a property owner within the municipality participates for the duration of the C-PACE assessment; or

c. a power purchase agreement with respect to a renewable energy system affixed to a property.

“Direct financing” means financing for a C-PACE project pursuant to a financing agreement entered into between a capital provider and a property owner.

“Electric vehicle charging infrastructure” means equipment designed to deliver electric energy to an electric vehicle or a plug-in hybrid vehicle.”

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

“Finance” or “financing” means the investing of capital in accordance with section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill), including the refinancing of an investment in an existing C-PACE project.

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

“Garden State C-PACE program” means the program established by the authority pursuant to sections 4 and 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

“Local C-PACE program” means a program established by a municipality pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Local C-PACE program ordinance” means an ordinance adopted by a municipality, and approved by the authority pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), to establish a program within its jurisdiction pursuant to subsection b. of section 5 and subsection a. of section 6 of P.L.    , c. (C. ) (pending before the Legislature as this bill).

“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 electric distribution system and that connects and disconnects from the electric distribution system to enable it to operate when both connected to, or independent of, the electric distribution system.

“Notice of assessment” means the document filed with the county recording officer in the county in which the property is located, for a specific property that notifies prospective holders of an interest in the property that a C-PACE assessment lien has been placed on the property.

“Opt-in ordinance” means an ordinance adopted by a municipality by which it authorizes its participation in the Garden State C-PACE program and authorizes the municipality to enter into an administration agreement with the authority.

“Participating municipality” means a municipality that:

a. adopts an opt-in ordinance and executes an administration agreement; or

b. adopts an opt-in ordinance, executes an administration agreement, and adopts a local C-PACE program ordinance.

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

“Program guidelines” means:

a. any program-related rules or documents, or both, other than the uniform assessment documents, prepared and published by the authority that apply to the Garden State C-PACE program; or

b. any program-related rules or documents, or both, other than the uniform assessment documents, prepared and published by a participating municipality that apply to its local C-PACE program, pursuant to subsection c. of section 5 of P.L. , c. (C ) (pending before the Legislature as this bill).

“Project costs” means costs associated with a C-PACE project and shall include: direct costs, including but not limited to, equipment, materials, and labor related to the purchasing, constructing, installing, modifying, or acquiring a C-PACE project; indirect costs, including, but not limited to, expenses and fees of engineers, architects, and other professionals, inspection fees and permits, warranties and pre-paid maintenance contracts; program fees; and financing costs of a capital provider, including, but not limited to, origination fees, prepaid interest and payment reserves, closing costs, counsel fees, trustee or custodian fees, recording fees, and other financing charges.

“Property” means industrial, agricultural, or commercial property; residential property containing five or more dwelling units; common areas of condominiums and other planned real estate developments as defined in section 3 of P.L.1977, c.419 (C.45:22A-23); and property owned by a tax-exempt or nonprofit entity, including, but not limited to, schools, hospitals, institutions of higher education, or religious institutions, within a participating municipality upon which a C-PACE assessment is imposed at the request of a property owner in connection with a C-PACE project.

“Property owner” means all of the owners of a property within a participating municipality who consent to a C-PACE assessment being imposed on the property, as well as the lessee of a property owned by a governmental entity or the lessee under a ground lease on a property whose legal owner consents in writing to a C-PACE assessment being imposed on the leasehold.

“Renewable energy system” means an improvement by which 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, biomass, or wind energy, together with the other fuels and energy sources that the authority, after consultation with the Board of Public Utilities, may determine pursuant to program guidelines prepared and published pursuant to subsection c. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

“Uniform assessment documents” means a uniform C-PACE assessment agreement, assignment agreement, and notice of assessment, a model lender consent to a C-PACE assessment pursuant to section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), and any other uniform or model documents prepared by the authority and used in the Garden State C-PACE program and local C-PACE programs, except that the authority shall not mandate a uniform financing agreement, which shall be supplied by the capital provider for direct financing.

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

3. (New section) a. No later than 18 months after the authority establishes the Garden State C-PACE program and annually thereafter, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report describing the implementation and operation of the Garden State C-PACE program and any local C-PACE programs, including information relating to any administrative costs, the number of C-PACE projects, the location of C-PACE projects, and the amount of financing issued for C-PACE projects.

b. No later than five years after the authority establishes the Garden State C-PACE program, the authority shall prepare and submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report that reviews and assesses implementation of the Garden State C-PACE program and any local C-PACE programs. The report shall evaluate the Garden State C-PACE program, including a review of foreclosure rates and any other factors the authority deems appropriate. The report may also identify and recommend legislative changes to P.L. , c.   (C.     ) (pending before the Legislature as this bill).

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

4. (New section) a. The authority shall establish a Garden State C-PACE program to facilitate the direct financing of C-PACE projects in municipalities that adopt an opt-in ordinance. The Garden State C-PACE program shall consist of, among other things, the development of uniform assessment documents for the direct financing of C-PACE projects to be undertaken by property owners as local improvements and the provision by ordinance for a C-PACE assessment to be imposed on properties within the municipality, if the owner of a property requests the C-PACE assessment in order to undertake and finance a C-PACE project. C-PACE projects on an individual property subject to the same C-PACE assessment agreement collectively shall constitute a separate local improvement and shall be assessed separately to the property owner benefitted thereby.

b. The authority may contract with one or more third-party administrators to assist the authority in its implementation or administration, or a combination thereof, of the Garden State C-PACE program pursuant to a competitive bidding process. The authority may delegate any duties under the program to one or more third-party administrators, provided that authority shall not delegate its responsibility for general oversight of the Garden State C-PACE program.

5. (New section) a. Within 180 days after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), the authority shall establish the Garden State C-PACE program by publishing on its Internet website:

(1) uniform assessment documents;

(2) a model opt-in ordinance;

(3) Garden State C-PACE program guidelines; and

(4) the process by which a municipality applies to the authority for approval of a local C-PACE program ordinance.

b. The model opt-in ordinance, as well as any local C-PACE program ordinance, shall prescribe criteria for qualifying a C-PACE project for a C-PACE assessment and shall include the following requirements:

(1) financing recipients shall be the legal or beneficial owners of the property or duly authorized by the legal or beneficial owners of the property, there shall be no defaults on any mortgage loans on the subject property, all tax payments with respect to the property shall be current, the legal or beneficial owners of the property shall not be not subject to any bankruptcy proceeding, and the subject property shall not be not the subject of a bankruptcy proceeding;

(2) the aggregate amount of all C-PACE assessments plus the outstanding balance due on all mortgage loans on a property shall not exceed 95 percent of the value of the property after including the value created by the C-PACE project;

(3) the determination of value of a property for purposes of qualifying for a C-PACE assessment shall be based on of any of the following:

(a) the value of the property as determined by the assessor;

(b) the market value of the property as estimated in a broker price opinion or comparative market analysis by a real estate broker or managing broker; or

(c) the as-complete or stabilized prospective market value of the property as estimated in an appraisal report prepared or co-signed by a licensed real estate appraiser within at least 24 months of the application for financing;

(4) the maximum duration of a C-PACE assessment shall not exceed the weighted average useful life of the improvements in the C-PACE project or 30 years, whichever is less;

(5) the amount of C-PACE assessment for a property shall be a specific amount, and the terms of repayment of direct financing shall be solely determined and negotiated between a property owner and capital provider subject to the maximum duration of an assessment in paragraph (4) of this subsection; and

(6) a property owner seeking a C-PACE assessment shall receive written consent of the existing mortgage holders on the property prior to the closing of the financing.

c. The Garden State C-PACE program guidelines and any local C-PACE program guidelines authorized by resolution of the governing body of a participating municipality shall include, but not be limited, to the following minimum procedures and requirements:

(1) a uniform project application, uniform application requirements, including uniform application documents; and the procedures for a property owner to obtain approval of a C-PACE project and a capital provider to finance a C-PACE project;

(2) minimum standards for a C-PACE project to qualify for C-PACE financing;

(3) eligibility criteria for a property owner and property to qualify for a C-PACE assessment; and

(4) rules for refinancing projects completed prior to the submission of a project application for a C-PACE assessment.

The provisions of the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), shall not apply to the preparation, publication, or implementation of the uniform assessment documents or the program guidelines of the Garden State C-PACE program or a local C-PACE program.

d. Upon recordation of the notice of assessment and C-PACE assessment agreement in the land records of the property, the C-PACE assessment shall be a single, continuous first lien on the property on and after the date of recordation. 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 the real estate or encumbrances thereon, without any additional notice, recording, filing, continuation filing, or action, until payment in full of the C-PACE 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 the real estate. Any confirmation of the amount of the C-PACE 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 C-PACE 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.

e. A C-PACE assessment shall be treated as a municipal lien rather than a contractual lien for all purposes of law.

f. Funds to finance a C-PACE project may be disbursed to, or for the benefit of, the property owner at execution of the C-PACE assessment agreement, or may be disbursed in installments over time. The 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. Payments of C-PACE assessments shall commence as set forth in the C-PACE assessment agreement. To the extent that upon completion of the C-PACE project, funds remain that have not been disbursed to the property owner, those funds on hand shall be used to reduce the amount of the C-PACE assessment in accordance with the C-PACE assessment agreement.

g. Except as provided in this subsection, if any payment of a C-PACE 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 participating 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 participating municipality, and shall be collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the participating municipality enforces collection of its unpaid property taxes through accelerated tax sales. The proceeds of the sale shall also pay the outstanding C-PACE assessments. However, the balance due on a C-PACE assessment shall not be subject to acceleration or extinguishment 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 the lien is struck off and sold to the participating municipality, the C-PACE 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 the real estate or encumbrances thereon, and provided that, notwithstanding the obligations of a participating municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5- 53.1), while the participating municipality holds the lien or owns the property, the participating municipality shall not be responsible for or required to make any payment in furtherance of or to satisfy the C-PACE assessment. In the event of a taking of the property by eminent domain or condemnation, the C-PACE assessment may be accelerated or extinguished, at the election of the capital provider, provided the capital provider is compensated by the governmental entity utilizing eminent domain or condemnation for the balance due on the unpaid C-PACE assessment and any interest, penalties, or other charges related thereto.

h. (1) C-PACE assessments shall be assigned directly by the participating municipality, and any assignee thereof, as security for financing from a capital provider to finance C-PACE projects. Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the participating municipality’s right, title, and interest in and to the C-PACE assessment, except for its obligations to bill, collect, remit, and enforce C-PACE assessments as set forth in the assignment agreement. The proceeds of a C-PACE assessment shall be considered “special revenues” owned by the capital provider pursuant to chapter 9 of the federal bankruptcy code.

(2) C-PACE assessments assigned as provided hereunder shall not be included in the general funds of the participating 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 participating municipality or assignee as provided herein. In the case of a participating municipality that is otherwise subject to tax or revenue sharing pursuant to law and which assigns C-PACE assessments as set forth in this section, the C-PACE 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 participating municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool. However, the redemption of any delinquent and unpaid C-PACE assessments, including any interest, penalties, or other charges related thereto, shall be paid no later than on the first available tax bill after the property has been sold after an action to foreclose the right of redemption.

i. The provisions of the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), shall not apply to the preparation, publication, or implementation of the uniform assessment documents or the program guidelines of the Garden State C-PACE program or a local C-PACE program.

6. (New section) a. A municipality that has adopted an opt-in ordinance may also establish a local C-PACE program to facilitate the financing of C-PACE projects in that municipality. In a municipality that has established a local C-PACE program pursuant to a local C-PACE Program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program or the local C-PACE program. In a municipality that has not established a local C-PACE program pursuant to a local C-PACE program ordinance, any C-PACE projects in that municipality may be financed pursuant to the Garden State C-PACE program only.

b. Notwithstanding the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.), or any other law, to the contrary, a municipality seeking to establish and implement a local C-PACE program shall adopt a local C-PACE program ordinance consistent with this section and section 5 of P.L. , c. (C ) (pending before the Legislature as this bill). A municipality may establish a local C-PACE program through the adoption of a local C-PACE program ordinance if the municipality has entered an administration agreement with the authority, and obtained approval of the ordinance from the authority pursuant to section 7 of P.L. , c. (C ) (pending before the Legislature as this bill). In addition to prescribing criteria for qualifying a C-PACE project for a C-PACE assessment pursuant to subsection b. of section 5 of P.L. , c. ( ) (pending before the Legislature as this bill), the local C-PACE program ordinance shall establish the following:

(1) A participating municipality may enter into an agreement with a county improvement authority or it may, pursuant to the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.) enter into contracts with one or more private parties, to assist the participating municipality in its implementation and administration, or a combination thereof, of the local C-PACE program. The municipality may delegate to one or more private parties or a county improvement authority such matters as the participating municipality determines.

(2) A participating municipality may, in addition to direct financing, offer financing of C-PACE projects through the issuance of bonds pursuant to section 9 of P.L. , c. (C ) (pending before the Legislature as this bill).

(3) A participating municipality shall, by resolution of the governing body, authorize the preparation of local C-PACE program guidelines pursuant to subsection c. of section 5 of P.L. , c. (C ) (pending before the Legislature as this bill) prior to closing a transaction on any C-PACE project under the local C-PACE program.

c. A participating municipality shall submit to the authority an annual report on its C-PACE financings.

7. (New section) a. A municipality seeking to establish a local C-PACE program pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall submit an application to the authority for approval. The application to the authority shall consist of the following:

(1) a proposed local C-PACE program ordinance consistent with subsection b. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill); and

(2) acknowledgement that the municipality shall use the uniform assessment documents prepared by the authority.

b. (1) The authority’s review of a municipality’s application shall be limited to confirming that it contains the items required by section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) and is otherwise consistent with P.L. , c. (C. ) (pending before the Legislature as this bill). Within 30 days after receipt of the application, the authority shall either approve or reject the municipality’s application. If the authority does not act within 30 days of receipt, the application shall be deemed approved.

(2) If the authority approves the application, or the application is deemed approved in accordance with paragraph (1) of this subsection, the municipality may adopt the proposed ordinance establishing a local C-PACE program.

(3) If the authority disapproves the application, it shall provide a detailed explanation to the municipality as to the reasons for the disapproval and the changes necessary to bring the proposed local C-PACE program ordinance into compliance with the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill). The municipality shall not adopt the proposed local C-PACE program ordinance if the authority disapproves the application, but the municipality may submit a revised or new application.

c. The authority shall have no role in a participating municipality’s local C-PACE program except for review and approval of its application pursuant to subsections a. and b. of this section and the collection of information regarding any C-PACE projects undertaken by a local C-PACE program pursuant to subsection a. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

8. (New section) a. The authority may charge a municipality a fee to review a proposed local C-PACE program ordinance. The fee shall reflect the reasonable and actual cost of the review, provided that the fee shall be a one-time charge not to exceed $5,000.

b. The authority may charge the property owner a fee for the review of an application for a C-PACE project in the Garden State C-PACE program. The fee, inclusive of any fee to compensate a third-party administrator, shall be a one-time fee that shall not exceed one percent of the amount financed, provided that the fee shall not exceed $75,000.

c. A participating municipality may charge the property owner a fee for the review of an application for direct financing in a local C-PACE program. The fee shall reflect the reasonable and actual cost of the review and shall be a one-time fee not to exceed one percent of the amount financed, provided that the fee shall not exceed $75,000.

d. A participating municipality may charge the property owner an annual fee for the billing, collecting, and remitting of the installment payments on the C-PACE assessment. The fee, inclusive of any fee to compensate a third-party administrator, shall reflect the reasonable and actual cost of the billing, collecting, and remitting and, shall be an annual charge not to exceed one-tenth of one percent of the annual C-PACE assessment amount due.

9. (New section) a. Financing for the implementation of C-PACE projects, including the refinancing of an investment in an existing improvement that qualifies as a C-PACE project, provided the existing improvement was completed no more than three years prior to the submission of an application to the Garden State C-PACE program or local C-PACE program for the financing, shall be made available to property owners in exchange for a C-PACE assessment on the property. The C-PACE assessment shall be used to repay the financing.

b. The governing body of a participating municipality may apply to a county improvement authority that issues bonds pursuant to paragraph (3) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue bonds on its own to finance the program.

(1) Notwithstanding any other law to the contrary, bonds issued by a participating municipality shall be authorized and issued by ordinance of the 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) 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) Bonds issued by a participating municipality or county improvement authority shall be non-recourse obligations of the issuer and shall not be considered to be direct and general obligations of the issuer, or the State of New Jersey or any political subdivision thereof. Any bonds issued or authorized by a municipality pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall not be considered gross debt of the municipality on any debt statement filed in accordance with the “Local Bond Law,” N.J.S. 40A:2-1 et seq.

(4) Bonds issued by a municipality or county improvement authority pursuant to this subsection may be backed by one or more C-PACE assessment contracts.

c. The authority shall allow capital providers to directly finance C-PACE projects. Any direct financing provided by a capital provider pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall not be guaranteed or secured by the full faith and credit of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered to be direct and general obligations of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered gross debt of any municipality on any debt statement filed in accordance with the “Local Bond Law,” N.J.S.40A:2-1 et seq., and shall not be considered “financial assistance” pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1). The Garden State C-PACE program shall not limit C-PACE financing to a single private capital provider.

d. A municipality, county improvement authority, or private entity authorized to implement or administer, or a combination thereof, a local C-PACE program shall allow capital providers to directly finance C-PACE projects. Any direct financing provided by a capital provider shall not be guaranteed or secured by the full faith and credit of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered to be direct and general obligations of any public entity, including the State of New Jersey or any political subdivision thereof, shall not be considered gross debt of any municipality on any debt statement filed in accordance with the “Local Bond Law,” N.J.S.40A:2-1 et seq., and shall not be considered “financial assistance” N.J.S. 34:1B-5.1. A local C-PACE program shall not limit C-PACE financing to a single private capital provider. The C-PACE assessment, lien and assignment agreement apply to direct financing from a capital provider.

e. A property owner who installs a renewable energy system under the Garden State C-PACE program or a local C-PACE 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 authority, the municipality, the county improvement authority, other public entity, or the private entity, or capital provider as applicable, which has financed the C-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, or private entity, the municipality, county, county improvement authority, other public entity, or private entity, or capital provider is authorized to sell, grant, assign, convey, or otherwise dispose of its interest in the certificates or credits to repay the financing.

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

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

b. Notwithstanding the provisions of subsection a. of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept, and a municipality shall not submit, an application to undertake the financing of the purchase and installation of renewable energy systems and energy efficiency improvements by property owners as a local improvement pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic Development Authority has published on its Internet website all the items pursuant to subsection a. of section 5 of P.L. , c. (C. ) (pending before the Legislature at this bill). The Director of Local Government Services in the Department of Community Affairs shall continue to process any application submitted prior to that date, and a municipality shall continue its undertaking approved prior to that date and any undertaking for which an application was pending on that date that is approved on or after that date.

c. All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

2. a. (1) Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, a municipality may adopt an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners and to authorize the issuance at public or private sale of non-recourse bonds as further provided herein. The governing body may apply to a county improvement authority that issues bonds pursuant to paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue bonds to finance the program pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2). Funds for the purchase and installation of renewable energy systems and energy efficiency improvements shall be loaned to property owners in exchange for a clean energy special assessment on the property pursuant to section 1 of P.L.2011, c.187 (C.40:56-1.4), to be paid quarterly. In the case of financing provided by bonds issued by a county improvement authority, the clean energy special assessment shall be used to repay the bonds. The bonds issued by a county improvement authority pursuant to this section shall be issued as non-recourse obligations of the authority and shall not be considered to be direct and general obligations of the authority. 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. The bonds issued by a municipality pursuant to this section shall be issued as non-recourse obligations of the municipality and shall not be considered to be direct and general obligations of the municipality. Any bonds issued or authorized by a municipality pursuant to this section shall not be considered gross debt of the municipality on any debt statement filed in accordance with the “Local Bond Law,” N.J.S.40A:2-1 et seq. A property owner who purchases and installs a renewable energy system under the program may also assign any solar renewable energy certificates or other renewable energy credits that accrue to the property owner from the operation of the system to the municipality or the county improvement authority to repay the loan for the system. The Director of Local Government Services in the Department of Community Affairs shall coordinate efforts with the Board of Public Utilities to ensure that the amount of financing made available by local programs authorized pursuant to this act is in accordance with limits set from time to time by the Board of Public Utilities in order to ensure that local programs further the goals of the Office of Clean Energy in the Board of Public Utilities.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept and a municipality shall not submit an application for approval of an ordinance to establish a program to finance the purchase and installation of renewable energy systems and energy efficiency improvements by property owners pursuant to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the date the Economic Development Authority has published on its Internet website all of the items pursuant to subsection a. of section 5 of P.L. , c. (C. ) (pending before the Legislature at this bill). The Director of Local Government Services in the Department of Community Affairs shall continue to process any application submitted prior to that date, and a municipality shall adopt any ordinance approved prior to that date and any ordinance for which an application was pending on that date that is approved on or after that date.

(3) All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

(cf: P.L.2019, c.335, s.4)

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

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

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

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

d. Notwithstanding the provisions of this section to the contrary, the Director of Local Government Services in the Department of Community Affairs shall not accept, and the governing body of a municipality shall not submit an application pursuant to subsection a. of this section after the date the Economic Development Authority has published on its Internet website all of the items pursuant to subsection a. of section 5 of P.L. , c. (C. ) (pending before the Legislature at this bill). The Director of Local Government Services in the Department of Community Affairs or a municipality shall continue to process any application submitted prior to that date, and an application approved by a municipality prior to that date shall be implemented.

e. All actions taken by the Director of Local Government Services in the Department of Community Affairs or any municipality pursuant to the provisions of this section shall be unaffected by the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50 **[**%**]** percent of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in **[**this act**]** the “county improvement authorities law,” P.L.1960, c.183 (C.40:37A-44 et seq.), including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of **[**this act**]** the “county improvement authorities law,” P.L. 1960, c. 183 (C.40:37A-44 et seq.), as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A county improvement authority shall also have as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units. A county improvement authority shall also have as its purpose the implementation and administration, or a combination thereof, of a local C-PACE program as defined in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) and to issue bonds to finance a C-PACE project for a local C-PACE program pursuant to section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

14. 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, 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, 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, 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 by property owners as provided in section 2 of P.L.2011, c.187 (C.40:56-13.1);

(3) To issue bonds, notes, or other obligations to finance a C-PACE project for a local C-PACE program pursuant to section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill);

(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 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;

(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 **[**subpenas**]** 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 subject to the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.);

(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; and

(v) To act as and exercise the powers of a land bank entity pursuant to P.L.2019, c.159 (C.40A:12A-74 et al.) for any municipality situated within the county pursuant to a land banking agreement approved by an ordinance adopted by the municipal governing body.

(cf: P.L.2019, c.159, s.17)

15. This act shall take effect immediately, except that neither the Garden State C-PACE program nor any local C-PACE program established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall be operable until the authority has published on its Internet website all of items required pursuant to subsection a. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).