

SENATE, No. 3407
STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JUNE 10, 2024

Sponsored by:
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District 38 (Bergen)
Assemblyman ANTHONY S. VERRELLI
District 15 (Hunterdon and Mercer)

Co-Sponsored by:
Assemblywomen Bagolie and Drulis

SYNOPSIS
Requires payment of prevailing wage for projects financed through commercial property assessed clean energy program.

CURRENT VERSION OF TEXT
As introduced.

AN ACT concerning the C-PACE program and amending P.L.2021, c.201.

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

1. Section 2 of P.L.2021, c.201 (C.34:1B-375) is amended to read as follows:

2. As used in sections 1 through 9 of P.L.2021, c.201 (C.34:1B-374 through C.34:1B-382):

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

"Authority" means the New Jersey Economic Development Authority.

"Authorized municipality" means a municipality with a population that, as of the launch date, is in the top third of municipalities in the State in terms of population, according to the most recent American Community Survey published by the United States Census Bureau.

"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;

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

e. a commercial lending institution chartered by a state or the federal government, including, without limitation, a savings and loan association, a credit union, or a commercial bank.

"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, and determined based upon either the existing use of a property or the contemplated use of unimproved property upon completion of new construction, as a means of securing financing provided pursuant to section 9 of P.L.2021, c.201 (C.34:1B-382) 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 in which the participating municipality agrees to levy, bill, collect, remit, and, to the extent necessary, enforce the C-PACE assessment.

"C-PACE project" means:

- a. the acquisition, construction, installation, modification, or, in the discretion of the authority and in accordance with guidelines adopted by the authority, entry into a capital lease 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 upon previously unimproved real property, within a participating municipality, provided that, on the basis of supplemental program guidelines to be published by the authority within 90 days following the launch date, a qualified professional attests that such new construction exceeds the minimum standards of the local and State building codes otherwise applicable to the property;
- b. at the discretion of, and in accordance with guidelines adopted by, the authority, 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. at the discretion of, and in accordance with guidelines adopted by, the authority, 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 a battery 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.2021, c.201 (C.34:1B-382), including, on the basis of supplemental program guidelines to be published by the authority within 90 days following the launch date, 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.2021, c.201 (C.34:1B-377 and C.34:1B-378).

"Garden State program agreement" means an agreement between the authority and a participating municipality defining:

- a. 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; and
- b. the obligations, if any, that the authority may undertake (1) with respect to the remittance of C-PACE assessments to capital providers if the remittance is authorized by regulations adopted by the Local Finance Board pursuant to section 38 of P.L.2000, c.126 (C.52:27D-20.1) and requested by the participating municipality, and (2) to review and approve the participation of individual capital providers or financings in the Garden State C-PACE program. [Neither the execution by the authority of a Garden State program agreement with a municipality nor its exercise of its rights or performance of its duties thereunder shall be considered "authority financial assistance" as that term is defined in section 1 of P.L.1979, c.303 (C.34:1B-5.1).]

"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.

"Launch date" means the date upon which the authority has taken all of the actions specified in subsection c. of section 5 of P.L.2021, c.201 (C.34:1B-378), other than any actions that are expressly required by P.L.2021, c.201 (C.34:1B-374 et al.) to be taken within 90 days following the launch date.

"Local C-PACE program" means a program established by an authorized municipality or a county pursuant to section 6 of P.L.2021, c.201 (C.34:1B-379).

"Local C-PACE program ordinance" means an ordinance adopted by an authorized municipality or a county, and approved by the authority pursuant to section 7 of P.L.2021, c.201 (C.34:1B-380), to establish a program within its jurisdiction pursuant to subsection b. of section 5 and subsection a. of section 6 of P.L.2021, c.201 (C.34:1B-378 and C.34:1B-379).

"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 a property is located, which 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 a Garden State program agreement with the authority.

"Participating municipality" means:

- a. a municipality that adopts an opt-in ordinance and executes a Garden State program agreement; or
- b. an authorized municipality that adopts an opt-in ordinance, executes a Garden State program agreement, and adopts a local C-PACE program ordinance and local C-PACE program guidelines approved by the authority.

"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, 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, prepared and published by an authorized municipality or a county, and

approved by the authority, that apply to local C-PACE programs pursuant to paragraph (3) of subsection b. of section 6 of P.L.2021, c.201 (C.34:1B-379).

"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, except that the authority may implement an alternative definition of "project costs" in its program guidelines in connection with the financing of new construction.

"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 an owner of a property within a participating municipality who consents to a C-PACE assessment being imposed on the property.

"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.2021, c.201 (C.34:1B-378).

"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).

"Transition renewable energy certificate" means a certificate issued by the Board of Public Utilities or its designee, under the solar energy transition incentive program, which is designed to

transition between the solar renewable energy certificate program and a solar successor incentive program to be developed by the Board of Public Utilities pursuant to P.L.2018, c.17 (C.48:3-87.8 et al.).

"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.2021, c.201 (C.34:1B-378), 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.

(P. L.2021, c.201, s.2)

2. Section 9 of P.L.2021, c.201 (C.34:1B-382) is amended to read as follows:

9. 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 county or authorized 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, in the case of an authorized municipality, may issue bonds on its own to finance project costs for C-PACE projects pursuant to a local C-PACE program or the Garden State C-PACE 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.2021, c.201 (C.34:1B-374 et al.) 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 project costs for C-PACE projects, or for such costs to be financed through bond issuance. Any direct financing provided by a capital provider pursuant to P.L.2021, c.201 (C.34:1B-374 et al.) 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),] except to the extent the authority may provide a guaranty as provided for in subsection d. of section 4 of P.L.2021, c.201 (C.34:1B-377). The Garden State C-PACE program and any local C-PACE program shall permit all capital providers that meet the eligibility requirements established in their program guidelines to provide financing through the program.

d. An authorized municipality or county that has established a local C-PACE program shall allow capital providers to directly finance project costs for C-PACE projects under the program. The repayment of any 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" pursuant to section 1 of P.L.1979, c.303 (C.34:1B-5.1),] except to the extent the authority may provide a guaranty as provided for in subsection d. of section 4 of P.L.2021, c.201 (C.34:1B-377).

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, transition 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, transition 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.

f. Other than as identified in this section, no public entity, including the State of New Jersey or any political subdivision thereof, may issue bonds to finance any C-PACE program, except to the extent the authority may issue bonds pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.).

g. Any direct financing provided by a capital provider for a C-PACE project under subsection b. or subsection c. of this section shall be considered "authority financial assistance" as that term is defined in section 1 of P.L.1979, c.303 (C.34:1B-5.1) and work on the project undertaken in connection with the assistance shall be subject to the prevailing wage requirements of that section.

(P. L.2021, c.201, s.9)

3. This act shall take effect immediately.

STATEMENT

This bill removes provisions in the current law that exclude financing under the Commercial Property Assessed Clean Energy ("C-PACE") Program from being considered as authority financial assistance or financial assistance that would require payment of the prevailing wage. The bill expressly provides that any direct financing provided by a capital provider for a C-PACE project is considered "authority financial assistance" as that term is defined in section 1 of P.L.1979, c.303 (C.34:1B-5.1) and that work on the project is subject to the prevailing wage requirements of that section.

The C-PACE program provides financing for renewable energy, energy efficiency, water conservation, and certain types

of resiliency-related improvements for New Jersey.

Pursuant to the bill, employers are required to ensure that not less than the prevailing wage rate is paid to workers involved in construction contracts connected to C-PACE program financing.

This includes projects undertaken to meet conditions for receiving assistance. The prevailing wage rate, determined by the Commissioner of Labor and Workforce Development, applies to any authority financial assistance including loans, loan guarantees, grants, incentives, tax exemptions, or other financial assistance provided by the authority.

