



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 9, 2024

**SUBJECT:** Garden State C-PACE Program

**Request:**

The Members are asked to approve:

1. The creation of the Garden State Commercial Property Assessed Clean Energy Program (“Garden State C-PACE Program” or “Program”), as authorized by N.J.S.A. 34:1B-374 to 382 (the “Act”), a program that provides a new form of financing, by facilitating the lending of private dollars, for renewable energy, energy efficiency, water conservation, and certain types of resiliency-related improvements to eligible property owners in New Jersey, and approval of the Program Guidelines and Supplemental Guidelines;
2. Delegation of authority to the Chief Executive Officer to approve individual applications of municipalities for participation in the Garden State C-PACE Program in accordance with the Program Guidelines and Supplemental Guidelines;
3. Delegation of authority to the Chief Executive Officer to approve individual applications of Qualified Capital Providers and Qualified Technical Reviewers for participation in the Garden State C-PACE Program in accordance with the Program Guidelines and as set forth in this memo;
4. Delegation of authority to the Chief Executive Officer to approve individual project applications for the Garden State C-PACE Program;
5. Delegation of authority to the Chief Executive Officer to approve the establishment of any local C-PACE program pursuant to the Act;
6. Delegation of authority to the Chief Executive Officer to decline any person or entity seeking the designation of Qualified Capital Provider or Qualified Technical Reviewer as well as to decline any project application for non-discretionary reasons;
7. Delegation of authority to the Chief Executive Officer to accept final administrative decisions prepared by a Hearing Officer for appeals based on solely non-discretionary reasons; and
8. Delegation of authority to the Chief Executive Officer to approve amendments to the Program Guidelines and Supplemental Guidelines based solely on statutory changes.

**Background:**

In August 2021, Governor Murphy signed P.L. 2021, c. 201 into law (N.J.S.A. 34:1B-374 -382) authorizing the establishment of the Garden State C-PACE Program in New Jersey and directing the New Jersey Economic Development Authority (“NJEDA” or “Authority”) to develop guidelines for the Garden

State C-PACE Program, which are to include the standard forms of documentation to be used for the administration of the Program , and to implement, administer, and oversee the Program. The Legislature found that 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. The Legislature also found that the up-front costs of retrofitting properties with these types of improvements are often a barrier to investing in such improvements, and the additional cost of meeting and exceeding new code requirements in connection with new construction can be a deterrent to the investments.

Recent studies have demonstrated that the existing financing options for these projects have not made them sufficiently available to property owners and developers. To facilitate financing for these types of projects, C-PACE financing allows repayment to be made by way of a special assessment on the real property to which the improvement is made and is an innovative way for property owners to finance the aforementioned improvements which, in turn, save a significant sum in utility costs or insurance premiums. C-PACE financing also creates jobs, stimulates local economies, reduces greenhouse gas emissions, and improves the safety and quality of the building stock which collectively enable New Jersey municipalities to contribute toward their goals of community sustainability and ultimately provide a valuable service to the citizens of their communities.

Over the past decade, C-PACE programs in more than two dozen states around the country have proven an effective tool to attract private capital into the renewable energy, energy efficiency, and resiliency markets. To date, according to the non-profit entity PACENation, there have been 8,340 C-PACE projects which have drawn a collective investment of \$7.2 billion and have created more than 88,785 job-years.

At this time, the Garden State C-PACE Program does not utilize any public dollars but rather facilitates private capital from Qualified Capital Providers. The Authority is authorized to establish a loss reserve or guarantee for C-PACE Direct Financing, but at this time staff is not proposing any such program.

### **Program Details:**

The Garden State C-PACE Program provides a new form of financing for renewable energy, energy efficiency, water conservation, and certain types of resiliency-related improvements for New Jersey. The Program works by enabling eligible commercial, industrial, agricultural, and certain multi-family residential real property owners in Participating Municipalities to access financing to undertake these kinds of improvements on their properties and repay the financing through the payment of a special assessment to the Participating Municipality, similar to the owner's real property tax, sewer, or water bill. The Participating Municipality then remits the payment to the capital provider. C-PACE financing is subject to various limits, which will be explained later in this memo.

The Act states that, similar to delinquent property tax bills, if any payment of a C-PACE assessment is not made 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 shall be imposed at the same rate as may be imposed upon unpaid property taxes in the Participating Municipality

Projects financed through the Program are secured by a special assessment lien on the improved real property, which is repaid in installments over time. Like other special assessments, a C-PACE Assessment is a non-accelerating, senior lien secured by the property. The repayment obligation transfers automatically to the next owner if the property is sold and, in the event of default, only the payments in arrears are due, i.e., the underlying loan cannot be accelerated. Because the payment is secured by a senior lien, C-PACE projects are seen as less risky than typical loans, which generally makes capital providers more willing to lend at lower interest rates than would otherwise be the case. Moreover, due to the security arrangements for the loan, capital providers are willing to extend loans that are longer in duration, typically tying the loan term to the expected life of the C-PACE project and its associated improvements. The longer

loan terms result in lower periodic debt service payments, making it easier for energy efficiency, water conservation and renewable energy-related C-PACE projects to be cashflow- positive from the outset.

The primary goals of the Program are to:

1. Serve as a catalyst for deployment of private financing at favorable interest rates into building decarbonization, renewable energy generation and storage, water conservation, and resiliency projects in the State;
2. Serve a public purpose through reducing energy costs, stimulating the economy, potentially improving property valuation, reducing greenhouse gas emissions, and creating jobs; and
3. Incentivize eligible property owners to undertake eligible projects in efforts to help achieve 100% clean energy in the State by 2035 and install zero-carbon-emission space heating and cooling systems in 20,000 commercial properties by 2030, as adopted through Executive Orders 315 and 316, respectively.

#### *Eligibility – Program Stakeholders:*

There are multiple parties involved in the Garden State C-PACE Program. Each party has unique eligibility criteria.

#### Municipality

Any municipality in the state of New Jersey is eligible to become a Participating Municipality, which is required for Eligible Projects to be undertaken in that municipality. To become a Participating Municipality, a municipality must adopt an Opt-In Ordinance authorizing its participation in the Program and enter into a Garden State Program Agreement with the Authority.

#### Eligible Property

To be considered an Eligible Property, a parcel must be located within a Participating Municipality and be:

1. One of the following:
  - 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 N.J.S.A. 45:22A-23; or
  - Property owned by a tax-exempt or nonprofit entity, but not limited to schools, hospitals, institutions of higher education, or religious institutions;
2. Must not be subject to any bankruptcy proceedings;
3. Must not be the subject of any mortgage loans with any default; and
4. All tax payments, charges, or assessments for the Property must be current

#### Eligible Owner

To be considered an Eligible Owner, an owner(s) must be the legal or beneficial owner of an Eligible Property who consents to a C-PACE Assessment being imposed on the Eligible Property and meets the following requirements:

- Must not be subject to any bankruptcy proceedings; and
- Have written consent from all mortgage lien holders on the Eligible Property of the proposed C-PACE Assessment.

#### Qualified Capital Provider

A Capital Provider seeking to become a Qualified Capital Provider must be one of the following and also must submit a completed application to the Authority. While by statute a public entity may also be a qualified capital provider, the proposed Program Guidelines do not include public entities. Staff will continue its review to determine changes to the Program Guidelines and documents necessary to adapt them for public entities to be Qualified Capital Providers.

- 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;
- 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;
- A special purpose securitization vehicle for the sale and transfer of securities, which is restricted to those persons described in subsections A.1 or A.2 of this definition; or
- 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.

### Technical Evaluator

Technical Evaluators perform an evaluation of the proposed Eligible Improvements and the C- PACE Project to ensure that they satisfy Program eligibility requirements.

A person or entity performing a technical evaluation must be one of the following:

- Certified Energy Manager or Certified Energy Auditor;
- Professional Engineer with demonstrated relevant experience; or
- Contractor with relevant demonstrated experience

### Technical Reviewer

Qualified Technical Reviewers perform reviews of the Technical Evaluations to ensure the C-PACE Project is eligible.

A person or entity seeking the designation of Qualified Technical Reviewer must be an Independent Party from the Qualified Capital Provider, Eligible Owner, and the Technical Evaluator(s) and must meet the following minimum qualifications:

- Be or employ a licensed Professional Engineer; or
- Be or employ an accredited individual with the appropriate licensure, according to the Program Guidelines.

### *Eligibility – Project Criteria:*

#### Eligible Improvement Categories

Eligible C-PACE Projects include:

- Energy Efficiency Improvements
- Water Conservation Improvements
- Renewable Energy System Improvements
- Energy Storage
- Electric Vehicle Charging Infrastructure
- Stormwater Management Systems
- Flood Resistant Construction Improvements
- Hurricane Resistant Construction Improvements
- Microgrid

#### Project Costs

Project costs for Eligible Improvements that can be financed through a C-PACE Direct Financing are the cost described below. For a Microgrid, project costs are limited to the Eligible Owner’s pro rata share of the Microgrid.

- Direct Costs – Including, but not limited to, costs for the equipment, materials, and labor related to or ancillary 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, financial advisors, legal counsel, and other professionals, inspection fees and permits, and warranties and pre-paid maintenance contracts;
- Financing Costs of Capital Providers – Including, but not limited to, origination fees, prepaid interest, and payment reserves, closing costs, counsel fees, trustees or custodian fees, recording fees, credit enhancements, credit rating agency fees, underwriting and placement fees, appraisal fees, and environmental reports, and other financing charges; and
- Program Fees as described in the Program Guidelines.

*Direct Financing Terms/Rates:*

Garden State C-PACE financing is currently limited to private capital from private lenders pursuant to the Act, and the Act establishes the following parameters for the Direct Financing terms and rates as follows:

1. The principal amount, when combined with mortgage and other lien obligations on the Eligible Property, shall not exceed ninety (90) percent of the appraised value of the Eligible Property after including the anticipated value created by the C-PACE Project as of the date of stabilization of operations at the Eligible Property;
2. The amount shall be a specific amount, which may not exceed the Project Costs;
3. The maximum duration shall not exceed the Weighted Average Useful Life (“WAUL”) of the Eligible Improvements in the C-PACE Project or thirty (30) years, whichever is less; and
4. Except as otherwise expressly provided in the Guidelines, the terms of repayment shall be solely determined and negotiated between the Eligible Owner and the Qualified Capital provider.

*Supplemental Guidelines:*

Whereas the aforementioned terms apply to all C-PACE Projects, as required by the Act, Staff are proposing Supplemental Guidelines pertaining to the financing of new construction projects as well as gut rehabilitation, refinancing, and retroactive financing projects.

In a new construction, gut rehabilitation, refinancing, or retroactive financing project, it can be difficult to identify every component of a clean energy or resiliency improvement in a project’s budget. Accordingly, rather than require a detailed breakdown of the budget, the Supplemental Guidelines amend the definition of Direct Costs to include all costs of the Eligible Project but set forth the methodology to determine a lower percentage of Project Costs that can be financed (subject to the maximum 90% of the Eligible Property’s value after the C-PACE Project is in operations). This methodology uses the 2021 International Energy Conservation Code (IECC 2021), which the State adopts every three years as the State Energy Subcode and most recently adopted in September of 2022, as a baseline and requires projects to exceed the code. An Eligible Owner can utilize Direct Financing to finance a base of 20% to 30% of the project’s as-complete value depending on how much the project exceeds the baseline code. Eligible Owners can also include Bonus Technologies to increase the amount of Direct Financing available. Each Bonus Technology, which include electric vehicle infrastructure, energy storage, heat pumps, and renewable energy generation, adds an additional 2.5%, capped at 35%. It is important to account for these Bonus Technologies separately because the IECC does not provide guidance on renewable energy generation, energy storage, or electric vehicle charging infrastructure.

The Supplemental Guidelines also allow for Eligible Owners to refinance an existing C-PACE Direct Financing with a new one so that owners may modify the terms and amount of the assessment.

Eligible Owners are also able to access retroactive financing, allowing for projects that have either been completed or that have been started but not yet completed and have not been financed with a C-PACE Direct Financing to retroactively finance into a C-PACE Direct Financing so long as the project

application is submitted no more than three years following the date of completion of the improvement or project.

*Diversity, Equity, and Inclusion:*

The Act does not require or allow any preferences for distressed areas or financing bonuses. Additionally, as the financing is solely private capital from private lenders, the Act does not require the private lenders to make any reservations or establish preferences.

*Prevailing Wage*

As originally authorized, P.L. 2024, c.75 stated that financing through the Program was not considered “authority financial assistance” and therefore was not subject to prevailing wage requirements. However, on September 12, 2024, Governor Murphy signed into law P.L. 2024, c.75, amending P.L. 2021, c.201 and thus requiring that C-PACE Direct Financing comply with the Authority’s prevailing wage requirements.

This includes: (1) payment of prevailing wage, (2) reporting to the Authority, and (3) compliance with the NJ Public Works Contractor Registration Act (PWCRC). To ensure compliance, staff proposes requiring that the Eligible Owner participate in an Authority meeting regarding the prevailing wage obligations once the Authority determines the proposed project is eligible but prior to the Authority issuing the Determination Letter of approval.

For retroactive projects (those that were not financed with C-PACE Direct Financing originally), staff proposes that the prevailing wage requirements apply to the work performed prior to application for which the Eligible Owner is seeking the Authority’s approval for C-PACE Direct Financing.

*Application Process:*

The Garden State C-PACE Program involves multiple applications, each submitted by a different party at different points of the process.

To be a participating Municipality, a municipality must opt into the program by adopting an Opt-In Ordinance and requesting approval by the NJEDA of the municipality’s participation. Staff will utilize an intake form that will be reviewed for completion and eligibility for participation under the Program Guidelines. Municipality opt ins will be accepted on a rolling basis and any municipality is able to opt in at any time. Participating Municipalities will be listed on the program website.

Applications for designation as a Qualified Capital Provider and a Qualified Technical Reviewer will also be accepted on a rolling basis. Staff will review for completion and eligibility under the Program Guidelines. As included in the Program Guidelines, a capital provider seeking to become a Qualified Capital Provider will require an Authority debarment/disqualification legal review and substantial good standing check with the Department of Environmental Protection, the Department of the Treasury and the Department of Labor and Workforce Development. A technical reviewer seeking to become a Qualified Technical Reviewer and a property owner applying for approval of Direct Financing will also be subject to a debarment/disqualification legal review, which scrutiny will be based on the Authority’s relationship to each under the Act and the Program Guidelines. A tax clearance certificate is not required from any party because the financing is solely private capital from private lenders. Qualified Capital Providers and Qualified Technical Reviewers will also be listed on the program website. Additionally, the Authority may require, on an annual basis, that the Qualified Technical Reviewer submit information or documentation pertaining to the qualification process to demonstrate continued qualification and may revoke the Technical Reviewer’s qualification if it no longer meets the Program’s qualification requirements or is not in compliance with the Act or the Program Guidelines.



Project applications, which are submitted by Eligible Owners to NJEDA, will also be accepted on a rolling basis. Applications will include, among other items, an identification of the Qualified Capital Provider, a description of the project, an appraisal, technical documentation related to energy efficiency, and certifications from the Qualified Capital Provider and the Qualified Technical Reviewer. The Qualified Capital Provider will certify to the eligibility of the Direct Financing, Eligible Property, Eligible Owner, and C-PACE Project. The Qualified Technical Reviewer will separately certify to the eligibility of the C-PACE Project and the work of the Technical Evaluator. An Eligible Owner, which is the party submitting a project application to the Authority, will require an Authority debarment/disqualification legal review.

If Staff determines a project is eligible, the Authority will issue a Determination Letter authorizing the C-PACE financing to close with 24 months, allowing for one 6-month extension. Once a project is complete, a Project Completion Report is submitted by the Qualified Capital Provider to the Authority. The Qualified Capital Provider also provides annual reporting to the Authority, no later than March 31<sup>st</sup>, on the performance of any financing provided in the prior year.

### **Legal Documents**

The Garden State C-PACE Program documents include legal documents that are to be used uniformly by each Program participant. These documents include program participation documents and uniform assessment documents, which are the documents used for each transaction. The documents implement the Program Guidelines.

### **Delegated Authority:**

The Members are requested to approve various delegated authorities to the Chief Executive Officer in light of the different nature of the program, in which neither the Authority nor the State is providing financial assistance. The requested delegation to approve individual applications of “Qualified Capital Providers” and “Qualified Technical Reviewers,” is consistent with other delegations to certify or designate participants in EDA administered programs. Because C-PACE Projects will be funded entirely by private capital from the Qualified Capital Providers and the technical qualifications are confirmed through a two-part process by the technical evaluator and Qualified Technical Reviewer, staff is also requesting delegated authority to approve C-PACE Project applications. The delegated authority requested also includes the ability to decline an application based solely on nondiscretionary reasons.

As stated in the Program Guidelines, actions by the Board or under delegated authority may be appealed. Appeals must be filed within 20 calendar days. The CEO of the Authority, or a designee, will designate a Hearing Officer who will review the application, the appeal, and any other relevant documents or information. The Hearing Officer has sole discretion to determine if an in-person hearing is necessary. The Hearing Officer will recommend an administrative decision, by way of a written report containing his or her findings and recommendations, which shall be advisory in nature. If the report is presented to the Board, the CEO may also include a recommendation to the report. The applicant shall have five business days, from receipt of the report to file comments and exceptions to the report. The Board shall consider the report, the CEO’s recommendation, and any comments and exceptions and subsequently issue a final decision on the appeal. Appeals of the final decision can be appealed to the NJ Appellate Division. Delegated authority is requested to accept final administrative decisions prepared by a Hearing Officer for appeals based on solely non-discretionary reasons.

### **Fees:**

NJEDA will charge applicants fees that are commensurate with the expected cost of the Authority administering this program:

- Application Fee: non-refundable \$1,000 fee paid at the time of submission of the Garden State C-PACE project application.

- Closing Fee of 1% of C-PACE of the loan principal, not to exceed \$75,000, paid at the time of the closing of the C-PACE financing.
- Technical Reviewer Fee amounting to the actual cost to use a technical reviewer retained by the Authority if the Authority so chooses to retain one.

Additionally, as authorized by the Act, the Program Guidelines set forth fees the Participating Municipality may charge.

**Recommendation:**

The Members are requested to approve:

1. The creation of the Garden State Commercial Property Assessed Clean Energy Program (“Garden State C-PACE Program” or “Program”), as authorized by N.J.S.A. 34:1B-374 to 382 (the “Act”), a program that provides a new form of financing, by facilitating the lending of private dollars, for renewable energy, energy efficiency, water conservation, and certain types of resiliency-related improvements to eligible property owners in New Jersey, and approval of the Program Guidelines and Supplemental Guidelines;
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8. Delegation of authority to the Chief Executive Officer to approve amendments to the Program Guidelines and Supplemental Guidelines based solely on statutory changes.



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Tim Sullivan, CEO

Prepared by: Max Frank

Attachments:

- Appendix A – Garden State C-PACE Program Guidelines
- Appendix B – Garden State C-PACE Supplemental Guidelines