

PACE 2017 Update: Is There Finally a Clear Path to Success?

By Erin L. Deady, AICP, Esq.

I. OVERVIEW OF PACE

Property assessed clean energy (“PACE”) programs allow a property owner to voluntarily finance energy efficiency or wind resistance improvements through a non-ad valorem assessment repaid through the annual tax bill. Pursuant to Section 163.08, F.S., improvements can include energy efficiency, renewable energy and wind resistance improvements.¹ In states other than Florida, PACE can

be used for improvements to mitigate for seismic damage, flooding and tornado resilience.² The PACE financing structure addresses a barrier to financing these types of projects by providing funds to the property owner upfront.

Local governments support PACE because programs spur local jobs for contractors and there is additional revenue through permit fees for PACE projects. PACE projects can

increase property values,³ creating another tax revenue enhancement tool for local governments. PACE also provides a strategy to reduce community-wide greenhouse gas (“GHG”) emissions and save money on utility bills.

PACE programs evolved first in California back in 2008 with great momentum, but that slowed in 2010 due to concerns raised by the

See “PACE 2017 Update,” page 12

Chair’s Report

by Jeannine S. Williams

April is a time of renewal. Spring cleaning allows us the opportunity to decide what we need, what we want, and what we can so ever carefully discard. As a Section, we have to make these types of decisions as well. First, allow me to reflect upon what we need. We need you, the Section’s best asset, the members. Everyone plays an important role in this team effort. I am grateful for your participation through the List Serve, Agenda and Florida Bar Journal articles, work on committees, and much more.

I look forward to your active role from May 11-13, 2017. The Section will host the 40th Annual Local Government Law in Florida Seminar at

the Caribe Royale in Orlando. Herb Thiele and Sandy MacLennan have put together great Certification Review and Public Finance seminars to begin the three days of CLEs. Chair-Elect Rob Teitler has planned one of the best line-ups of presentations that the Section has seen for the Annual. Please join us as we celebrate 40 years of providing excellent CLE programming. The networking involved at the CLEs, the reception and our Section meeting is yet another opportunity for Section participation.

What we want as a Section is to provide valuable benefits to you. In addition to wonderful CLE programming, we grant funding for interns to

provide valuable resources in government legal offices. We also provide a complimentary copy of the Stetson Law Review Local Government Law Symposium to all members. This year, we developed a mentoring program to

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CHAIR'S REPORT

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provide the opportunity for mutually beneficial relationships.

Additionally, the Section continues to take the lead on issues of importance to our members. We took a legislative position opposing current legislation which strives to limit judicial terms. The Section also voted to provide Amicus support in two cases, one involving government liens and the other regarding the public employers' ability to discipline employees. I look forward to our Section becoming even more active in the future.

Now, let's focus on the things we can discard. Usually, this is the hardest part because something needs to go. However, this year we are fiscally sound. This is due in large part to the great work of the following Executive Council members: Paul Bangel, Amanda Coffey, Don Crowell, Holly Hawn, Andy Lannon, Craig Leen, Michele Lieberman, Victoria Mendez, David Migut, David Miller, Mark Moriarty, Nicole Shalley, Kyle Shephard and Rob Teitler. Thank you! I am also grateful for the glue that holds our Section together, Ricky Libbert, our Section Administrator.

It has truly been an honor and a pleasure to serve as Chair of the City,

County, and Local Government Law Section. I have enjoyed the support of so many of you throughout the year. Thank you to our Board of Governors Liaison, Joshua Chilson, for being engaged in the work of the Section. Special thanks to Immediate Past President Mark Moriarty for leaving

the Section in such great shape last year. I know that we will continue the tradition of excellence that our founders started more than 40 years ago under the leadership of Rob Teitler and Michele Lieberman. The best is yet to come. May your life be filled with blooms and blessings!



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This newsletter is prepared and published by the City, County and Local Government Law Section of The Florida Bar.

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Of Constitutional Dimension – Four Proposals to the Constitution Revision Commission

by Craig E. Leen

Florida is unique among the fifty states in that it holds the equivalent of a Constitutional Convention every twenty years. Indeed, Article XI, Section 2 of the Florida Constitution expressly establishes the Constitution Revision Commission (CRC), indicating that it is comprised of the Attorney General, fifteen members selected by the Governor, nine members selected by the Speaker of the House, nine members selected by the Senate President, and three members selected by the Chief Justice. The CRC has the power to propose constitutional amendments and place them directly on the ballot for consideration by the voters, with passage requiring a 60% supermajority. The CRC is in the process of holding public hearings throughout the State and will then determine which, if any, amendments will be recommended.

One of the most remarkable parts of the CRC process is that individual citizens can propose amendments and have them considered by the full CRC. I recently proposed amendments on four topics, including ones directly relevant to cities and counties such as the strengthening of home rule and sovereign immunity. I then attended the CRC public hearing in Miami to speak on these four topics. I wanted to briefly share these proposals as they each relate to local governments in some manner, with the first two topics being core principles of local government law (which I will focus more on for purposes of this article). I also hope to provide encouragement to others to propose amendments.

Protecting Home Rule

There has been substantial debate recently over the balance of authority between the state government and local governments. Localities need sufficient police power authority to address the myriad of specific issues that come up at the local level. The state

has an interest in uniform regulations for statewide matters where it decides to preempt the field of regulation. In light of these principles, I proposed the following Home Rule amendment:

Article 8, Section 2. Municipalities.—

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law except where the legislature has adopted uniform regulations that fully occupy a particular field it has chosen to regulate. Each municipal legislative body shall be elective.

The purpose of this amendment is to establish that localities will always be able to legislate unless the state preempts the field. This will ensure that there is never a complete absence of authority to regulate, which could lead to harms that cannot be redressed.

I also proposed alternative language that would encode section 6.02 of the Miami-Dade County Charter in the Constitution. This part of the Miami-Dade Charter ensures that municipalities in Miami-Dade can always have higher standards than the County (which sets the county-wide minimum standard). Similarly, this provision would ensure that the State could set minimum guidelines but that localities would always be able to enact a higher standard of regulation or service:

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes, except as otherwise provided by law. Each municipality shall have the authority

to exercise all powers relating to local affairs not inconsistent with general law. Each municipality may provide for higher standards of service and regulation than that provided by general law in order that its individual character and standards may be preserved for its citizens. Each municipal legislative body shall be elective.

Encoding Sovereign Immunity as Immunity from Suit

It may surprise you to learn that the Florida Constitution does not mention sovereign immunity; instead, it is a principle derived from English common law and the historical right of the government to control whether it can be sued in its own courts. Sovereign immunity for planning level functions also helps ensure separation of powers by protecting discretionary legislative and executive decisions from being contested or second-guessed through a judicial process. The purpose of this amendment is to ensure that sovereign immunity is treated as an immunity from suit as a matter of state substantive law when it is raised in either state or federal court.

The Florida Supreme Court provided “clarification” in *Wallace v. Dean* that there was a difference between whether there was a lack of duty and the “later inquiry whether the governmental entity remains sovereignly immune from suit” and that “sovereign immunity may shield the government from an action in its courts (i.e., a lack of subject matter jurisdiction) even when the state may otherwise be liable to an injured party for its tortious conduct.” 3 So. 3d 1035, 1044-45 (Fla. 2009) (emphasis added). The Court later created a right to interlocutory appeal for sovereign immunity in Rule 9.130(a) (3)(C)(xi) of the Florida Rules of Appellate Procedure. See *In re Amends. To Fla. Rule of Appellate Procedure* continued, next page

FOUR PROPOSALS

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9.130, 151 So. 3d 1217 (Fla. 2014). (As a member of the Appellate Court Rules Committee at that time, I was assigned the original referral from the Supreme Court on this matter).

Nevertheless, the federal Eleventh Circuit continues to treat Florida sovereign immunity as merely immunity from liability and does not recognize a right to interlocutory appeal under the federal collateral order doctrine. See *Parker v. American Traffic Solutions*, 835 F.3d 1363, 1367-71 (11th Cir. 2016). The Eleventh Circuit bases this conclusion on a line of cases emanating from *Dept. of Education v. Roe*, 679 So. 2d 756 (Fla. 1996) and *CSX Transportation, Inc. v. Kissimmee Util. Auth.*, 153 F.3d 1283, 1286 (11th Cir. 1998).

This has resulted in an anomalous situation where the Eleventh Circuit treats Florida sovereign immunity as merely immunity from liability while treating Alabama and Georgia sovereign immunity as immunity from suit (which can be appealed on an interlocutory basis under the collateral order doctrine). See *Tinney v. Shores*, 77 F.3d 378, 382 (11th Cir. 1996) (regarding Alabama law); *Griesel v. B.D. Hamlin*, 963 F.2d 338, 340-41 (11th Cir. 1992) (regarding Georgia law). Likewise, the Florida Supreme Court recognizes a right to interlocutory appeal for Florida sovereign immunity, while the Eleventh Circuit does not.

This Constitutional amendment will ensure that Florida sovereign immunity is treated as immunity from suit in both state and federal court, which will be of benefit to local governments, as sovereign immunity issues will be resolved early in the case and there will be more case law providing certainty as to when sovereign immunity applies:

Article 2, Section 10. Sovereign Immunity.

The state and its agencies and subdivisions shall be entitled to sovereign immunity, which constitutes immunity from suit. No suit may be brought against the state and its agencies and subdivisions except to the extent sovereign immunity is waived under applicable law.

Ensuring that Appellate Decisions have Explanations

A substantial majority of appellate decisions in the District Courts of Appeal are decided by per curiam affirmance (PCA) where no explanation of the decision is provided. I learned a significant amount about PCAs through my former role as Chair of the Ad Hoc Subcommittee on Per Curiam Affirmances for the Appellate Court Rules Committee (the Subcommittee and ACRC ultimately recommended an expansion to the grounds for seeking a written opinion following a PCA, which is presently pending before the Florida Supreme Court as part of Case No. 17-152). I have also authored a law review article regarding elimination of PCAs that will be published soon in the FIU Law Review, which contains my analysis as to why PCAs should be eliminated.

As I discussed in my submission to the CRC, decisions without explanation (i) significantly limit the jurisdiction of the Florida Supreme Court to further consider a matter (as it is impossible to demonstrate conflict jurisdiction with a PCA), (ii) do not provide explanatory guidance to lower tribunals and the parties, which can be a local government that will need to apply the law in future matters and would directly benefit from such guidance in doing so, and (iii) can be deeply disappointing to the party that lost and was not provided a reason, including private citizens where this may be one of their only interactions with the justice system. I explore PCAs comprehensively and in further depth in the forthcoming FIU Law Review article.

Here is the proposed amendment:

Article 5, Section 1. Courts.—The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. All appellate decisions must include an explanation of the basis for the decision. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial

power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions. The legislature may, by general law, authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of a decision to the District Court of Appeal, First District.

Equal Rights for Individuals with Cognitive Disabilities

As a parent of two children who have been diagnosed with autism, one of whom is on the severe part of the spectrum, you might imagine my surprise and disappointment to learn that the Basic Rights provision of the Florida Constitution is worded in a manner that discriminates against individuals with cognitive disabilities. This should be addressed as soon as possible to ensure individuals have all of their basic rights and to emphasize that individuals with cognitive disabilities should receive constitutional protection in the same manner as individuals with physical disabilities.

The proposed rule is as follows

Article 1, Section 2. Basic Rights - All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical or cognitive disability.

Conclusion

The ability to propose Constitutional amendments and speak before the CRC are tremendous opportunities to positively impact Florida law. It is also important for local government attorneys to monitor amendments before the CRC that could negatively affect local governments and then make your voices heard as to those amendments.

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City County and Local Government Law Certification Review Course 2017

COURSE CLASSIFICATION: ADVANCED LEVEL

One Location: Thursday, May 11, 2017

Caribe Royale Orlando • 8101 World Center Drive • Orlando, FL
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Course No. 2310R

8:00 a.m. – 8:15 a.m. **Late Registration**

8:15 a.m. – 8:20 a.m.

Welcome

*Jeannine Williams, Chief Assistant City Attorney of St. Pete
Chair, City, County and Local Government Law Section*

8:20 a.m. – 9:05 a.m.

Home Rule and Allocation of Taxing Powers

Robert L. Nabors, Nabors, Giblin & Nickerson, Tallahassee

9:05 a.m. – 9:45 a.m.

Public Finance

Grace E. Dunlap, Bryant Miller & Olive, P.A., Tampa

9:45 a.m. – 10:30 a.m.

Sunshine Law and Public Records Law

*Patricia R. Gleason, Special Counsel for Open Government
Attorney General's Office, Tallahassee*

10:30 a.m. – 10:40 a.m. **Break**

10:40 a.m. – 11:15 a.m.

Ethics

Sheila M. Tuma, The Florida Bar, Tampa

11:15 a.m. – 12:00 noon

Public Sector Employment Liability

Erin G. Jackson, Thompson, Sizemore, Gonzalez, Tampa

12:00 noon – 12:30 p.m.

Eminent Domain

Mary J. Dorman, HDR Engineering, Inc., Tampa

12:30 p.m. – 1:45 p.m. **Lunch**

1:45 p.m. – 2:30 p.m.

Conflicts of Interest/Financial Disclosure (Ethics under Part III, Chapter 112, Florida Statutes)

C. Christopher Anderson, III, Commission on Ethics, Tallahassee

2:30 p.m. – 3:00 p.m.

Procurements

Fred Springer, Bryant Miller Olive, Tallahassee

3:00 p.m. – 3:15 p.m. **Break**

3:15 p.m. – 3:45 p.m.

Sovereign Immunity

Greg Stewart, Nabors, Giblin & Nickerson, Tallahassee

3:45 p.m. – 5:00 p.m.

Land Use/Zoning and Practice & Procedures Before Local Government Legislative and Quasi-Judicial Bodies

*Mark P. Barnebey, Blalock Walters, Bradenton
Herbert W.A. Thiele, County Attorney, Leon County, Florida*

5:30 p.m. – 7:00 p.m.

**Reception – All members, seminar attendees, and guests are
welcome (included in registration)**

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Those who have applied to take the certification exam may find this course a useful tool in preparing for the exam. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have significant experience in their field and have tried to include topics the exam may cover. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination.

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- Member of the City, County and Local Government Law Section: \$260
- Non-section member: \$295
- Full-time law college faculty or full-time law student: \$198
- Persons attending under the policy of fee waivers: \$100

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Enclosed is my separate check in the amount of \$35 to join the City, County and Local Government Law Section. Membership expires June 30, 2017.

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The Florida Bar Continuing Legal Education Committee and
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PUBLIC FINANCE IN FLORIDA 2017

Course Classification: Intermediate Level (2311R)

and

40TH ANNUAL LOCAL GOVERNMENT LAW IN FLORIDA

Course Classification: Intermediate Level (2313R)

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SCHEDULE OF EVENTS

PUBLIC FINANCE IN FLORIDA 2017 (2311R)

Thursday, May 11, 2017

8:00 a.m. – 8:50 a.m.

Late Registration and Continental Breakfast

8:50 a.m. – 9:00 a.m.

Welcome and Opening Remarks

9:00 a.m. – 9:30 a.m.

Green Bonds: What's the Deal?

Niyala Harrison, Squire Patton Boggs, Miami

9:30 a.m. – 10:15 a.m.

Direct Placement of Municipal Debt (aka Bank Loans)

Peter L. Dame, Akerman, Jacksonville

10:15 a.m. – 10:30 a.m.

Break

10:30 a.m. – 11:30 a.m.

SEC vs City of Miami and Michael Boudreaux

Mitchell E. Herr, Holland & Knight, Miami

Henry J. Hunnefeld, Senior Assistant City Attorney, City of Miami

Benedict P. Kuehne, Law Office of Benedict P. Kuehne, Miami

11:30 a.m. – 12:00 noon

Social Impact Bonds: A new financing technique to fight homelessness and other societal needs

Kenneth Artin, Bryant Miller & Olive, Orlando

12:00 noon – 1:30 p.m.

Lunch (included in registration)

1:30 p.m. – 2:20 p.m.

Technology in Public Finance - How to Optimize the MSRB's EMMA Disclosure Platform

Municipal Securities Rulemaking Board, Washington, D.C.

2:20 p.m. – 3:00 p.m.

Federal Tax Update: New Issue Price Regulations and Status of Federal Tax Reform

John W. Hutchinson, Squire Patton Boggs, New York

3:00 p.m. – 3:15 p.m.

Break

3:15 p.m. – 4:00 p.m.

Securities Disclosure Policy and Procedures in the Wake of the SEC's MCDC Initiative

Jennifer LaRocco, GrayRobinson, Tampa

4:00 p.m. – 4:50 p.m.

Local Government Attorney's Role in a Bond Transaction

Jason Walters, Hopping Green & Sams, Tallahassee

5:30 p.m. – 7:00 p.m.

Reception (section members, seminar attendees and guests are invited)

40TH ANNUAL LOCAL GOVERNMENT LAW IN FLORIDA (2313R)

Friday, May 12, 2017

8:15 a.m. – 8:30 a.m.

Late Registration and Continental Breakfast

8:30 a.m. – 8:40 a.m.

Welcome and Opening Remarks

Jeannine Williams, City, County and Local Government Law Section, Chair

Dana Crosby-Collier, City, County and Local Government Law Section, Past Chair

8:40 a.m. – 9:30 a.m.

Promoting Ethics Within Our Legal System

Wifredo Ferrer, United States Attorney for the Southern District of Florida

9:30 a.m. – 10:00 a.m.

Workforce Housing, Medical Marijuana Dispensaries and Other Current Land Use Issues

Dennis Kerbel, Assistant County Attorney, Miami-Dade County

10:00 a.m. – 10:30 a.m.

Hot Topics in Wetlands and Water

Michelle Diffenderfer, Lewis Longman & Walker

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:25 a.m.

Let's Get Acquainted: Maximizing Relationships with Your Local School District Lawyer

Walter J. Harvey, Miami-Dade County School Board Attorney

11:25 a.m. – 12:05 p.m.

Facebook and Instagram and Twitter (and Texting)...Oh My! Open Government and Social Media Issues

Pat Gleason, Attorney General's Office

12:05 p.m. – 1:50 p.m.

Lunch/Annual Meeting (Included in Registration Fee)

1:50 p.m. – 2:40 p.m.

Temptations and Tripwires: Statutory Ethics for Public Officers and Employees

Chris Anderson, Florida Commission on Ethics

2:40 p.m. – 3:15 p.m.

Cellular Backhaul in Florida Rights of Way

Thomas A. Cloud, GrayRobinson

3:15 p.m. – 3:30 p.m.

Break

3:30 p.m. – 4:20 p.m.

What Lies Beneath? Latent Defects in Pipe Construction: A 6-Year Story of Construction Litigation Told from the Trenches

Andrew P. Lannon, City Attorney, Palm Bay

Pete Sweeney, Deputy City Attorney, Palm Bay

Steven Brannock, Brannock & Humphries

Steven R. Schooley, The Schooley Law Firm

Ben Nolan, P.E. Managing Director, Bereley Research Group

Roger Archabal, P.E. Langan Engineering & Environmental Services

(continued, next page)

4:20 p.m. – 5:00 p.m.

Hot Topics in Employment and Labor Law: Evolving LGBT EEO Issues, ADA and Pregnancy Accommodation Obligations, Drug Screens, Criminal Background Checks, and More

*Louis D. Wilson, Ford Harrison
David Kalteux, Ford Harrison*

5:30 p.m. – 7:00 p.m.

Reception

Saturday, May 13, 2017

8:15 a.m. – 8:30 a.m.

Continental Breakfast

8:30 a.m. – 8:40 a.m.

Opening Remarks

Dana Crosby-Collier, City, County and Local Government Law Section, Past Chair

8:40 a.m. – 9:10 a.m.

Defending Workers Compensation Claims: A Look at the Florida Supreme Court’s Recent Rulings on Constitutionality

*Jill E. Jacobs, Deputy City Attorney, Palm Bay
Lynda Slade, Deputy County Attorney, Miami-Dade*

9:10 a.m. – 9:40 a.m.

Whistle While You Work? Protecting Whistle-blowers and Litigating Against Blowhards

Derek Schroth, Bowen & Schroth, P.A.

9:40 a.m. – 10:20 a.m.

Not in My Backyard: Combatting Crimes and Nuisances with Innovative Legislation Based on Home Rule

Craig Leen, City Attorney, Coral Gables

10:20 a.m. – 10:30 a.m.

Break

10:30 a.m. – 11:05 a.m.

Too Fast, Too Furious, Too Far? A Review of the Recent Forfeiture Statute Changes

Patricia D. Smith, Deputy City Attorney, Palm Bay

11:05 a.m. – 11:35 a.m.

How Much Privacy Do We Have Left? An Update on the Fourth Amendment in the Electronic Age

Gregory A. Hearing, Thompson, Sizemore, Gonzalez & Hearing, P.A.

11:35 a.m. – 12:25 p.m.

What Passed? What Failed? 2017 Legislative Wrap-up

*Ginger Delegal, Florida Association of Counties
Kraig Conn, Florida League of Cities*

CLE CREDITS

Public Finance in Florida 2017 (2311R)

General: 7.0 hours
Technology: 1.0 hour

CERTIFICATION PROGRAM

(Max. Credit: 7.0 hours)

City, County & Local Government: 7.0 hours
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40th Annual Local Government Law in Florida (2313R)

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Federal Housing and Finance Agency (“FHFA”), Fannie Mae (“Fannie”) and Freddie Mac (“Freddie”) regarding the seniority of the PACE lien over mortgages. Today, PACE-enabling legislation is active in 33 states plus D.C., and PACE programs are now active (launched and operating) in 19 states plus D.C. Residential PACE is currently offered in California, Florida, and Missouri.⁴ Several Federal legislative attempts in 2011 and 2012 to resolve these concerns failed to pass.⁵ Federal litigation against the FHFA, Fannie and Freddie occurred from 2010 to 2013, along with a court-mandated federal rulemaking process that was later suspended.⁶ Appeals to several PACE-related bond validation proceedings in Florida also slowed progress. Despite these challenges, PACE implementation is taking off in Florida. PACE programs throughout the country may differ by method of financing, eligible improvements, whether the program includes

residential and whether the program includes specific criteria to minimize the risk.

To date nationally, almost \$4 billion worth of PACE improvements have been completed, almost 150,000 total projects completed and over 40,000 jobs created.⁷ In Florida, approximately 9,000 projects have been completed at a total value of \$220,000,000 and PACE programs currently serve about half the population.

II. THE PACE LAW IN FLORIDA

In 2010, Section 163.08, F.S. authorized local governments to create PACE programs.⁸ The statute finds “a compelling state interest” for PACE programs; clarifies the public purpose and confers a special benefit from the improvements; requires use of the Chapter 197, F.S. levy and collection process; defines a “qualifying improvement”; allows local governments to partner and form a program and levy the assessments across jurisdictional lines; and clarifies that

PACE assessments are considered a “senior lien.”⁹ It provides a general framework within which local governments (municipality, county, dependent special district or separate legal entity created pursuant to Section 163.01, F.S.) have flexibility to create and administer programs.

III. FEDERAL OBSTACLES

On September 18, 2009, Fannie directed lenders to treat PACE assessments as any other tax assessments, but later in 2010 Fannie and Freddie reversed that position through “lender letters” reflecting a more adverse position to PACE with the FHFA following suit. In response, eight (8) complaints were filed in federal courts in California, Florida and New York.¹⁰ Claims against the FHFA, Fannie and Freddie included violations of the federal Administrative Procedure Act (“APA”); unfair business practices; violations of the National Environmental Policy Act (“NEPA”); and violations of the Tenth Amendment to the U.S. Constitution

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2016-2017 CALENDAR

CITY, COUNTY AND LOCAL GOVERNMENT LAW SECTION

<p><u>May 11, 2017</u></p> <ul style="list-style-type: none">- City, County and Local Government Law Certification Review Course- Public Finance in Florida 2017- Executive Council Meeting <p><i>Caribe Royale, Orlando</i></p> <p><u>May 12, 2017</u></p> <ul style="list-style-type: none">- Annual Meeting- 40th Annual Local Government Law in Florida Annual Meeting <p><i>Caribe Royale, Orlando</i></p>	<p><u>May 13, 2017</u></p> <ul style="list-style-type: none">- 40th Annual Local Government Law in Florida <p><i>Caribe Royale, Orlando</i></p> <p><u>June 23, 2017</u></p> <ul style="list-style-type: none">- Executive Council Meeting – The Florida Bar Annual Convention <p><i>Boca Raton Resort & Club</i></p>
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(reserving to the states all powers except those granted to the federal government).

Plaintiffs argued that Fannie and Freddie had purchased and guaranteed mortgages subordinate to government assessment liens and PACE assessments were no different. The Plaintiffs sought remedies holding that: (1) the assessments are liens, not loans (a constant theme even recently in front of the Florida Supreme Court); (2) the assessments do not pose risk, and do not alter traditional lending practices; (3) the assessments constitute liens equal to county taxes and assessments; and (4) the assessments do not contravene Fannie or Freddie's Uniform Security (mortgage) Instruments in terms of lien status. Injunctive relief was also sought to prevent adverse actions against participants or local governments involved in PACE.

The Defendants argued that pursuant to 12 U.S.C. § 4617, in a conservatorship role over Fannie and Freddie, the FHFA acted to preserve safe and sound financial practices per the Housing and Economic Recovery Act ("HERA") of 2008. They argued that the FHFA's actions were not reviewable and they were within its authority. They also argued that the Plaintiffs' claims were not in the zone of interests protected by HERA, and that the FHFA did not issue any rule or regulation subject to notice and comment under the APA. Ultimately, the Courts found for the Defendants in all cases with specific narrow rulings regarding FHFA's authority under HERA.¹¹ There were no pronouncements on the validity of the assessments under State or local law. The remedies sought by Plaintiffs were never addressed.

The California court did require at one point that a Federal rulemaking process be initiated regarding the FHFA's actions.¹² The FHFA began that notice and comment process on January 26, 2012, with the publication of an Advance Notice of Proposed Rulemaking seeking public comment¹³ and received 33,000 comments in response. On June 15, 2012,

the FHFA issued a Notice of Proposed Rulemaking and Proposed Rule concerning underwriting standards related to PACE programs.¹⁴ Due to the final disposition of the cases, the Rule was ultimately withdrawn by the FHFA.

IV. PACE DEVELOPMENT AFTER THE FEDERAL CHALLENGES

After a post-litigation "cooling off period", PACE programs began again developing. Some have focused on commercial (Connecticut and Texas) and others have scaled residential PACE successfully (California, Florida with Missouri just recently launching). These PACE programs are administered either at the state (Connecticut) or local level (most other states). The primary differences are the financing strategy, lien status and whether residential is included.

Several innovations have also occurred in the PACE market. The first is that running a common program for multiple local governments is more efficient at either the state or local levels.¹⁵ Second, multiple financing alternatives can be offered (or the "open market" approach) which primarily is only a factor in commercial programs. And finally, multiple PACE programs are now being offered within a single jurisdiction (the "multi-provider" approach). Programs manage the "risk of the unknown" through disclosing that Fannie and Freddie have raised concerns with the nature of the assessments and that it is possible upon resale or refinancing of a property that a property owner may have to pay off that remaining PACE lien balance first. These disclosures are important to provide notice to property owners before they undertake the PACE transaction. Additionally, all costs, financing rates, payment schedules, etc. are routinely disclosed to property owners.

V. FLORIDA PACE BOND VALIDATION CHALLENGES

Prior to 2014, three (3) successful bond validations were unchallenged: (1) St. Lucie County secured in 2010, (2) Florida PACE Funding Agency secured in 2011, and (3) the Green Corridor secured in 2012 and paved

the way for the PACE bond validation process. In 2014, five (5) bond validations for PACE were appealed to the Florida Supreme Court.¹⁶ Two (2) appeals included an attack on the PACE statute itself, Section 163.08, F.S. (*Florida Bankers Association ("FBA") and Gowen*).¹⁷ Other appeals were related to procedural issues for cases involving the *Leon County Energy Improvement District ("LCEID")*, a dependent special district of Leon County;¹⁸ the *Clean Energy Coastal Corridor ("CECC")*;¹⁹ the *Florida Development Finance Corporation ("FDFC")*²⁰ and the *Florida Green Finance Authority ("FGFA")*.²¹ By the end of 2015, all of the bond validation appeals had been favorably resolved upholding the underlying PACE programs.²² Despite the fact that there was no specific ruling on the validity of the PACE assessments, the merits of that issue were fully briefed providing opportunity for the Florida Supreme Court to opine on that issue.

Bond validations, pursuant to Chapter 75, F.S., are undertaken to use bond proceeds to finance the actual "qualifying improvements" in a PACE program. The scope of bond validations includes: (1) does the public body have authority to issue the bonds; (2) is the purpose of the bonds legal, and (3) compliance with the requirements of law.²³ Chapter 75, F.S., provides that "property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by issuance of bonds" may become parties to a bond proceeding.²⁴ Section 75.07, F.S., provides that "[a]ny property owner, taxpayer, citizen or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing" (emphasis added).

All of the appeals in some form relied upon *Meyers v. City of St. Cloud*, 78 So. 2d 402 (Fla. 1955) to confer standing. But the PACE cases were distinguishable from *Meyers* because at the time *Meyers* was decided sixty-one years ago, intervention after a final judgment was permissible. Subsequent to *Meyers*, Section 75.07, F.S., was revised and still states today that "[a]ny property owner, taxpayer, citizen or person interested

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may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing.” In the PACE bond validation cases, the Florida Supreme Court found that full party status is granted only to those who appear and plead in the circuit court proceedings (“by moving against or pleading to the complaint”).²⁵ This was a critical element in the *FBA* and *Gowen* cases where the validity of the statute and non-ad valorem assessments were both issues raised. This was the grounds for resolving the *FBA* case.

Robert Reynolds, a citizen of Leon County, filed a notice of appeal in two (2) of the proceedings (*LCEID* and *FDFC*) and three (3) citizens in Broward County, Vicki Thomas, Christopher Trapani and Sidney Karabel, filed an appeal in the *CECC* proceeding. The *FBA* also filed a notice of appeal in one (1) of the proceedings (*FDFC*) raising virtually identical issues to those raised in the previous FHFA Federal litigation. Finally, James Gowen appealed the bond validation judgment of the *FGFA*. Appellants in three (3) of the five (5) cases were represented by common counsel raising narrow procedural issues such as the use of judicial foreclosure in the PACE context. Appellants, the *FBA* and *Gowen*, were represented by separate counsel attacking the statute. The following provides a case overview for the five (5) proceedings:

A. *Reynolds v. Leon County Energy Improvement District (SC14-710)*- Notice of Appeal was filed on April 10, 2014, the final day to appeal the bond validation. The basis was whether the *LCEID* had authority to issue bonds and whether judicial foreclosure was an appropriate remedy. An Emergency Motion to Disqualify was filed on the grounds that there was a conflict of interest with one (1) of the counsel and the Court relinquished jurisdiction to the circuit court for a period of 45 days to conduct an evidentiary hearing. *LCEID*’s motion to disqualify was granted and the Supreme Court affirmed. Oral argument was held on February 4, 2015 and the Court affirmed the validation, remanding only to require removal

of judicial foreclosure as a remedy in the Florida PACE context.

B. *Thomas v. State of Florida (SC14-1282)*- Notice of Appeal filed on July 2, 2014 and the basis of the claim was again the use of judicial foreclosure. Oral argument was held February 5, 2015 and the Court affirmed validation but remanded to remove judicial foreclosure.

C. *Florida Bankers Association v. State of Florida (SC14-1603)*- Notice of Appeal was filed on August 15, 2014. Amicus Briefs were filed by seven (7) interested parties including the Green Corridor, Florida Green Finance Authority, Sierra Club, Associated Builders and Contractor of Florida, Southern Alliance for Clean Energy, PACENow (now PACENation), Florida Association of Counties and Florida Municipal Electric Association. The basis for *FBA*’s argument was that the validation unconstitutionally provided lien priority rights to special assessments over mortgages and was an impairment of contract. Oral argument was held on May 7, 2015 and the Court dismissed the case for lack of standing under *Meyers*, never opining on the nature of the assessments or lien priority despite the fact that the issues were fully briefed.

D. *Reynolds v. State of Florida (SC14-1618)*- The basis of the claims was scope of authority of *FDFC* to assess and levy assessments as well as the common issue of judicial foreclosure. Oral argument was held on May 7, 2015 and the Court affirmed the final judgment but with remand to remove judicial foreclosure as a remedy.

E. *Gowen v. State of Florida (SC14-2269)*- The Initial Brief was an exact copy of the brief filed by the *FBA* but filed as an individual citizen party versus the Bankers Association or actual bank. *FGFA* filed a Motion to Dismiss which was granted without any substantive opinion rendered.

In conclusion, all of the PACE programs were upheld, although rulings required elimination of the use of judicial foreclosure as a remedy where that issue was raised. No programs were required to undertake the validation process again (as was requested by the challengers) and a

new standard was set under *Meyers* that party status is conferred in bond validation proceedings only for those who appear and plead in the proceedings below. By late October 2015, after eighteen (18) months of delay and now with the bond validation appeals resolved, PACE finally had the “legal greenlight” for strong growth within Florida.

VI. FLORIDA PROGRAM STATUS

Notwithstanding the federal issues and litigation, several local governments in Florida have launched PACE programs (approximately 50% of the state population is served by one (1) or more programs). To clarify previous confusion, there is no State of Florida PACE program. All of the PACE programs within Florida are formed “by local governments to operate for local governments” and are formed pursuant to Section 163.01, F.S., interlocal agreements with the exception of St. Lucie County. Additionally, all PACE programs in Florida are operated by a third-party administrator (either for profit or not-for-profit). Several common themes exist:

- None of the PACE programs charge fees to local governments to join or terminate;
- Multi-jurisdictional programs “indemnify” the participating local governments pursuant to Section 163.01(7)(b), F.S., which states that “separate legal entities” have the common power to “... incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement;”
- Multi-jurisdictional programs allow new “partners” to enter into the program through a fairly standard process: pass a Resolution and execute an interlocal agreement; and
- All access one (1) common “platform” including a web-based application process, information hotline and contractor registration.

In the multi-jurisdictional programs, there are two (2) main structures and operation is through either

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(1) membership and participation in representational Board per Section 163.01, F.S. through a fairly standard interlocal agreement or (2) new members “subscribe” to the PACE program. The difference is that the representational boards have some type of participatory structure such as “voting/non-voting” or board seat rotation. Contrast that with a subscription to a pre-existing board without a rotational or participatory element. The base interlocal agreements for the programs will specify which type of structure the program affords. Regardless of the structure, all programs involve a partnership of local governments (or the St. Lucie County exception) on some level to levy and collect the assessments. The Florida programs include:

1. The Green Corridor District PACE Program (“Green Corridor”) is a statewide multi-jurisdictional structure administered by Ygrene consisting of voting and nonvoting members, with total membership including over 90 local governments (some municipal or unincorporated county or combination thereof). The Green Corridor includes both residential and nonresidential properties. Since its inception, the program has financed approximately \$193 million in qualifying improvements as of March 2017. The majority of these improvements have been on residential property with an average residential project size of \$21,789.

2. Formerly “Florida Green Energy Works”, now “RenewPACE,” is a statewide multi-jurisdictional structure consisting of a transitional representational board. EcoCity Partners, L3C, the third-party administrator of the program, was acquired by Renew Financial in October 2015. The program serves both commercial and residential projects in 75 local governments (some municipal or unincorporated county or combination thereof). The program has financed approximately \$22.5 million in projects since September of 2016 and the average project size is \$22,892.

3. The Florida PACE Funding Agency, partnering with Alliance

NRG, can execute transactions in 252 separate local governments (some municipal, unincorporated or combination thereof) including both residential and commercial PACE projects.

4. The LCEID decided to initially pursue commercial and multi-family PACE (units of quadplexes and greater) by utilizing a Request for Proposals (“RFP”) and selecting Ygrene as its third-party administrator. After executing an administrator agreement on September 13, 2013, the LCEID set about establishing its commercial and multi-family PACE program. The successful bond validation appeal cleared the way for the LCEID to continue with developing its program. Leon County has also shifted to a multi-provider approach offering the Home Energy Renovation Opportunity (“HERO”) program administered by Renovate America.

5. The Solar and Energy Loan Fund (“SELF”) has now been operational for six (6) years and has expanded service into 63 jurisdictions in Florida. SELF is a non-profit community lending organization that provides unsecured personal loans (not PACE assessments) for residential building retrofits anywhere in Florida, including energy efficiency, renewable energy, wind-hazard mitigation, and water conservation projects. To date, SELF has completed more than 1,000 energy audits and closed more than 625 home improvement loans totaling \$5.13 million, with 70% of the lending in low- and moderate-income communities. SELF is also an approved field partner with KIVA.org and has now raised \$428,000 of low-cost loan capital worldwide through innovative peer-to-peer lending (i.e., crowdfunding). In addition, SELF also helped create and secure financing for St. Lucie County’s new PACE program and has closed eight (8) PACE projects to date, including a new residential program opened on February 1, 2017.

6. Florida Development Finance Corporation²⁶ in association with Florida Resiliency and Energy District is the newest PACE program in Florida to start (administered by Renovate America) whereby other program administrators may be added later. The program is currently

available in 16 separate local government jurisdictions (again municipal, county or a combination thereof) and full launch is expected this spring. The Board has a minimum of three (3) and a maximum of five (5) Board members.

VII. TAX COLLECTOR AND PROPERTY APPRAISER AGREEMENTS

Agreements with the County Property Appraisers and Tax Collectors are also being executed for levy and collection of the assessments for reimbursement of administrative costs per Chapter 197, F.S. This statutory section addresses several other aspects of the uniform method of collection, including the timeline by which assessment rolls must be submitted.

Pre-existing agreements with these offices for routine non-ad valorem assessments are the typically starting point. Depending on the program and local government, these agreements may be separate agreements between the PACE provider and the Property Appraiser and Tax Collector (meaning two (2) agreements) or a tri-party agreement between the PACE provider and the Constitutional Offices. There is no “model” agreement because some of the Property Appraisers and Tax Collectors are seeking certain attributes in the agreements, but most have the same common provisions of indemnification and responsibility for reimbursement of fees. Some have used their requisite Florida Association of Tax Collectors or Property Appraisers standard form agreement, but others have their own individual standard form agreements they prefer to use. Whichever form is used, they typically all contain the same terms and conditions outlining cost reimbursement, format and data requirements, deadlines/calendar dates for preparation of the notices and assessment roll, indemnifications and termination provisions.

Executing an Agreement with the Tax Collector offices is typically the starting point to facilitate inclusion on the tax bill for upcoming year. Property Appraiser discussions typically include more discretion on the part of the Property Appraiser as to

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whether or not they include non-ad valorem assessments in the TRIM notices and whether or not the PACE program wants the program assessments included in the TRIM notice (for cost to the program).²⁷ While these agreements can take some time to negotiate, the process has become much more streamlined as both the constitutional officers and PACE program administrators have become more educated about policy, noticing, data and regulatory issues.

VIII. CONSUMER PROTECTIONS

The most common concern on the part of local governments, consumer protection interests and program supports has been the protection of participants. Concerns have also been raised regarding communications between PACE contractors and participants and disclosures about program elements. Another concern routinely raised is that regarding the level of understanding the program participant has about the lien process and ramifications for non-payment.

To address concerns over protections for the program participants, several approaches exist to create

protective standards expanding those already contained within the PACE statute. These include: local government ordinances²⁸ or administrative code provisions to address consumer protections;²⁹ standardized language included in the Interlocal Agreements;³⁰ language included in the levy and collection agreements;³¹ and requests on the part of the local government to review “Consumer Protection Policies” of the PACE providers. Several PACE providers in other states have publicly adopted key concepts of consumer protection into their program offerings.³²

PACENation also has updated its Consumer Protection Policies (Version 2.0) which act as guidelines for PACE Administrators but also serve as a resource for consumers and government partners across the U.S. PACENation recommends that PACE Programs should implement consumer protection policies (“Policy” or “Policies”) addressing the following areas: (1) Eligibility and Risk; (2) Disclosures and Documentation; (3) Funding; (4) Operations; (5) Post-Funding Homeowner Support; (6) Data Security; (7) Privacy; (8) Marketing and Communications; (9) Protected Classes; (10) Registered Contractors; (11) Eligible Products; (12) Pricing; (13) Reporting; (14) Closing & Funding; and (15) Policy Revision & Certification.³³ PACENation

updated these policies this year after the Department of Energy created its own “Best Practice Guidelines for Residential PACE Financing Programs” in 2016 covering many of the same topics.³⁴ The goal of these efforts is to create standards that programs follow across the nation to achieve successful programs.

Of late, there have been some articles that have highlighted consumer protection concerns, but there has been acknowledgment and swift movement within the industry to make improvements.³⁵ PACE providers have participated in local government legislative processes to ensure they can comply with standards if a local government decides to adopt them. PACE providers in other states have also participated in the development of more specific consumer protections.³⁶ Finally, Morningstar Credit Ratings, LLC, has created a report to address some of the misconceptions with PACE programs and how they operate with particular focus on transparency, risk and oversight of PACE.³⁷ While there is no silver bullet to address every concern, the PACE providers are typically open to addressing concerns raised to build successful programs with the knowledge that unsatisfied or uninformed participants pose a

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significant threat to the success of the programs.

IX. STATE AND FEDERAL LEGISLATION 2017

As the saying goes, nothing is sacred while the Legislature is in session and PACE is no exception to scrutiny. During this year's Florida Legislative Session, two (2) key concepts saw legislative play.

First, Florida Banking interests pushed to subordinate PACE liens statutorily. House Bill 1373 was an attempt to subordinate PACE non-ad valorem assessments (which are a senior lien) into junior position to mortgages. Effectively, the measure would have thrown the 9,000 current PACE assessments into jeopardy and ended PACE as we know it in Florida. Vermont and Maine have both passed "subordinate lien" PACE-like statutes and have not been able to generate any success with the tool. Without the senior lien position, interest rates cannot be comparable to other financial tools such as personal loans or lines of credit.

Second, utility and consumer protection interests have sought, through House Bill 1351, to add significant disclosures to renewable energy installations (17 new written disclosures in 12-point font) above and beyond what PACE providers must already disclose on qualifying improvements. As of writing, negotiations are ongoing related to this legislation which has drawn interest from not only PACE providers, but solar interests, contractors and industry associations. In particular, the legislation defines local governments implementing PACE programs as "sellers" of distributed energy generation systems (renewable) thus turning PACE programs into essentially contractors creating numerous new duplicative and onerous requirements for program operations. The current form of the bill will hopefully be modified to address these concerns.

Finally, Senator Tom Cotton (R-Arkansas) and Senator Marco Rubio

(R-Florida) have introduced Federal legislation (the PACE Act of 2017) amending the Truth in Lending Act³⁸ and a disclosure statement explaining that the real property retrofit loan will result in a lien on the real property securing the loan. Problematic is the legislation reconfigures the PACE transaction as a consumer loan versus its current status as a local government assessment. H.R. 1958 has been introduced on the House side by Rep. Brad Sherman (D-California) and Rep. Edward Royce (R-California) taking the same approach modifying the Truth in Lending Act to address PACE. That said, these bills do not represent the first attempt at Federal legislation related to PACE as noted earlier, but this approach related to the Truth in Lending Act is new.

X. FUTURE DIRECTIONS

On August 24, 2015, the White House announced its intentions to "unlock" residential PACE programs. New "guidance" was issued by the U.S. Department Housing and Urban Development ("HUD") on July 19, 2016 for properties with PACE assessments to be dealt with when there is an existing mortgage through HUD's Federal Housing Administration ("FHA").³⁹ It includes the conditions under which borrowers purchasing or refinancing properties with existing PACE assessments will be eligible to use FHA-insured financing. The crux of the guidance is that properties which will remain encumbered with a PACE obligation may be eligible for FHA-insured mortgage financing, provided that the mortgagee determines that certain conditions are met such as the fact that the PACE obligation must be collected just like any other local government lien or assessment and that there was proper noticing. The bottom line is that this could signal movement that proper safeguards with PACE programs can mean the PACE assessments can transfer upon resale or refinance as intended.

XI. CONCLUSIONS

Harvard Business Review recognized PACE as one of its top the "Breakthrough Ideas" in 2010. With legal challenges laid to rest, new

guidance, and now a positive course of performance developing, it seems as though we have a much clearer path to success for PACE in Florida. That said, the industry still faces scrutiny and challenges. PACE also is not a single tool, it is one of many tools that local governments and property owners have to reduce energy costs, improve resiliency, reduce greenhouse gas emissions, and stimulate the local economy. Only through a commitment to full transparency and a track record of beneficial cost-savings projects will governments, PACE providers and participants be able to build successful partnerships through PACE programs.

Erin L. Deady is President of Erin L. Deady, P.A. located in West Palm Beach, Florida. Ms. Deady received her Law Degree from Nova Southeastern University in 2000 and the firm specializes in energy, sustainability, climate, land use, environmental and administrative law. The Author has worked on program development for multiple PACE programs and on both Federal and State litigation involving PACE. The author wishes to thank Amity Barnard, Esq., (Erin L. Deady, P.A.), Herb W. Thiele (the County Attorney of Leon County), Chad Friedman (Partner at Weiss Serota Helfman Pastoriza Cole & Boniske) and Doug Coward (Executive Director of the Solar and Energy Loan Fund) for their previous updates and contributions to this article.

Endnotes:

- 1 Fla. Stat. § 163.08(2)(b) (2016).
- 2 See Cal. Sts. & High. Code § 5899 (West 2011) and 2015 Ala. Acts 494.
- 3 Laurie S. Goodman and Jun Zhu, PACE Loans: Does Sale Value Reflect Improvements Value Study, *Journal of Structured Finance* Vol. 21, No. 4 (Winter 2016).
- 4 PACENation, available at: <http://pacenation.us/pace-programs/> (accessed April 7, 2017).
- 5 E.g., PACE Assessment Protection Act of 2011, H.R. 2599, 112th Cong. (2011).
- 6 Mortgage Assets Affected by PACE Programs, 77 Fed. Reg. 3958 (proposed Jan. 26, 2012) (to be codified at 12 C.F.R. pt. 1254).
- 7 PACENation, available at: <http://www.pacenation.us/> (accessed April 7, 2017).
- 8 Fla. Stat. § 163.08(5) (2016).
- 9 Fla. Stat. § 197.3631 (2016), provides general provisions for the use of special assessments. Special assessments are defined in Fla. Stat. § 197.3632, F.S., as "assessments

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which are not based upon millage and which can become a lien against a homestead permitted in Section 4, Article X of the State Constitution.” Certain special assessment liens are given a priority equal to that of liens for general taxes and superior to all other liens. See, e.g., Fla. Stat. § 153.05(10), (2016) (sanitary sewer assessments) and Fla. Stat. § 170.09 (alternative method of making local municipal improvements).

10 Plaintiffs included the Sierra Club; Sonoma County, California; Placer County, California; the City of Palm Desert, California; the Natural Resource Defense Council, Inc.; the Town of Babylon, New York; and Leon County, Florida (Leon County filed its Complaint on October 8, 2010).

11 On October 24th 2012, the Second Circuit Court of Appeals upheld the dismissal of the cases from the Southern and Eastern Districts of New York. The Florida case was appealed and argued before the Eleventh Circuit Court of Appeals on October 30, 2012 and on November 9, 2012, the Eleventh Circuit upheld the dismissal from the Northern District of Florida.

On August 9, 2012, the Northern District Court of California granted the Plaintiffs’ motion for summary judgment with respect to their notice and comment claim under the APA finding that the FHFA’s actions amounted to substantive rulemaking. A final judgment was entered in the case on October 16, 2012, dismissing all other claims. On March 19, 2013, the Ninth Circuit Court of Appeals vacated the District Court’s previous order and dismissed it for lack of jurisdiction. The Ninth Circuit panel held that the FHFA’s decision to cease purchasing mortgages on PACE-encumbered properties was a lawful exercise of its statutory authority as conservator of Freddie and Fannie. The panel held that the courts do not have jurisdiction to review actions that the FHFA takes as a conservator, and dismissed the case.

12 Administrative Procedure Act of 1946, 5 U.S.C. § 551 *et seq.* (2012).

13 Mortgage Assets Affected by PACE Programs, *supra*, note 6.

14 Enterprise Underwriting Standards, 77 Fed. Reg. 36086 (proposed Jun. 15, 2012) (to be codified at 12 C.F.R. pt. 1254).

15 Connecticut has launched a single state-wide platform focused on Commercial PACE “C-PACE,” run by the Clean Energy Finance and Investment Authority (“CEFIA”) and Connecticut Energy Efficiency Fund. C-PACE offers financing to commercial, industrial or multifamily property owners. The statewide Authority provides a platform for local governments to join and receive delivery of a common PACE program.

16 *Robert Reynolds v. Leon Cnty. Energy Improvement Dist., Etc., et al.*, No. SC14-710 (Fla. filed Apr. 11, 2014); *Vicki Thomas et al. v. State of Fla.*, No. SC14-1282 (Fla. filed Jul. 2, 2014); *Fla. Bankers Ass’n v. State of Fla.*, No. SC14-1603 (Fla. filed Aug. 15, 2014); *Robert Reynolds v. State of Fla.*, No. SC14-1618 (Fla. filed Aug. 18, 2014); *Gowen v. State of Fla., Etc., et al.*, No.

SC14-2269 (Fla. filed Nov. 14, 2014).

17 *Fla. Bankers Ass’n v. State of Fla.*, No. SC14-1603 (Fla. filed Aug. 15, 2014); *Gowen v. State of Fla., Etc., et al.*, No. SC14-2269 (Fla. filed Nov. 19, 2014).

18 *Leon Cnty. Energy Improvement Dist. v. State of Fla.*, No. 2013-CA-003396 (Fla. 2nd Cir. Ct. Mar. 13, 2014); *Robert Reynolds v. Leon Cnty. Energy Improvement Dist.*, No. 2014-APS-000230 (Fla. 1st DCA Apr. 10, 2014); *Robert Reynolds v. Leon Cnty. Energy Improvement Dist.*, 176 So. 3d 254 (Fla. 2015).

19 *Clean Energy Coastal Corridor v. State of Fla.*, No. 2013-CA-003457 (Fla. 2nd Cir. Ct. May 27, 2014); *Vicki Thomas et al. v. State of Fla.*, No. 2014-APS-000416 (Fla. 1st DCA Jul. 1, 2014); *Thomas v. Clean Energy Coastal Corridor*, 176 So.3d 249 (Fla. 2015).

20 *Fla. Dev. Fin. Corp. v. State of Fla.*, No. 2014-CA-000548 (Fla. 2nd Cir. Ct. Jun. 16, 2014); *Fla. Dev. Fin. Corp. v. State of Fla.*, No. 2014-APS-000526 (Fla. 1st DCA Aug. 15, 2014); *Fla. Bankers Ass’n v. Fla. Dev. Fin. Corp.*, 176 So.3d 1258 (Fla. 2015).

21 *Fla. Green Fin. Auth. v. State of Fla. et al.*, No.2014-CA-002004 (Fla. 2nd Cir. Ct. Nov. 15, 2014); *Gowen v. Fla. Green Fin. Auth.*, No. 2014-APS-000743 (Fla. 1st DCA Nov. 18, 2014); *Gowen v. State*, 163 So.3d 509 (Fla. 2015).

22 *Robert Reynolds v. Leon Cnty. Energy Improvement Dist.*, 176 So.3d 254 (Fla. 2015); *Thomas v. Clean Energy Coastal Corridor*, 176 So.3d 249 (Fla. 2015); *Fla. Bankers Ass’n v. Fla. Dev. Fin. Corp.*, 176 So.3d 1258 (Fla. 2015); *Gowen v. State*, 163 So.3d 509 (Fla. 2015).

23 *Miccokuske Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 48 So.3d 811, 817 (Fla. 2010).

24 Fla. Stat. § 75.05 (2016) (establishing procedure for circuit court to issue order to show cause in bond validation proceedings); see also Fla. Stat. § 75.07 (“[a]ny property owner, taxpayer, citizen or person interested may become a party to the action”).

25 *Robert Reynolds v. Leon Cnty. Energy Improvement Dist.*, 176 So.3d 254, 255 (Fla. 2015).

26 FDFC acts as a special development financing authority that specializes in providing financing support to fund capital projects that support economic development and job creation on a state-wide basis (See Interlocal Agreement Relating to the Creation of the Florida Resiliency and Energy District).

27 Fla. Stat. § 200.069 (2016) (Notice of proposed property taxes and non-ad valorem assessments. The bottom portion of the notice shall further read in bold, conspicuous print: “Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district.” Further, the 2016 *TRIM Compliance Workbook Regular Taxing Authorities*, lists several TRIM Forms, one of which is the Notice of Proposed Property Taxes and Non-Ad Valorem Assessment, Form DR-474N, (Rule 12D-16.002, F.A.C., Eff. 11/12). On page 2 of this form, it states: Non-ad valorem assessment are placed on this notice at the request of the local governing boards. Your tax collector will be including them on the November 2016

tax notice. For details on particular non-ad valorem assessments, contact the levying local governing board.

28 See Palm Beach County, Fla., Proposed Ordinance (April 4, 2017); available at: <http://www.pbcgov.com/pubInf/Agenda/20170404/4A1.pdf> (accessed April 7, 2017).

29 See Broward County, Fla., Ordinance 2015-44 (October 27, 2015); Miami-Dade County, Fla., Ordinance 16-30 (March 8, 2016).

30 See Alachua County’s Interlocal Agreement opting into the Green Corridor PACE District and Florida Green Finance Authority, available at: <http://meetingdocs.alachua-county.us/documents/bocc/agendas/2016-02-09/97f154de-8a41-4a8c-84d6-f2796c6fa981.pdf> and <http://meetingdocs.alachua-county.us/documents/bocc/agendas/2015-12-08/bc7b7f2d-b4a5-4262-b033-ed1fb2065eee.pdf>.

See Alachua County’s Rights and Responsibilities of Property Owners and PACE Providers (January 11, 2016), available at: <http://meetingdocs.alachua-county.us/documents/bocc/agendas/2016-02-09/cfd64ba0-a293-45e8-9f69-8aaddc687b9e.pdf>.

See Alachua County’s Truth in Lending Disclosures (October 26, 2015), available at: <http://meetingdocs.alachua-county.us/documents/bocc/agendas/2016-02-09/c1a41349-5c6e-4047-a755-0d11cf50f808.pdf>.

31 See Agreement between the Pasco County Tax Collector and Florida Green Finance Authority (February 22, 2016) (on file with the Florida Green Finance Authority).

32 See CaliforniaFIRST’s Quality Assurance and Consumer Protection Measures, available at: http://www.pacenation.us/wp-content/uploads/2015/02/CalFirst_ConsumerProtect_FINAL.pdf.

33 PACENation: PACE Consumer Protection Policies, Version 2.0 (Residential PACE Programs) (Spring 2017), available at: <http://pacenation.us/wp-content/uploads/2017/02/PACENation-Consumer-Protection-Policies-v2.0-02.17.17-with-attachments.pdf> (accessed April 7, 2017).

34 Department of Energy “Best Practice Guidelines for Residential PACE Financing Programs”, available at: <http://pacenation.us/wp-content/uploads/2017/02/best-practice-guidelines-RPACE-1.pdf> (accessed April 7, 2017).

35 Katie Fehrenbacher, As PACE Financing Grows Up, the Industry Grapples With Lending Standards and Consumer Protections (March 29, 2017), available at: <https://www.greentechmedia.com/articles/read/PACE-financiers-grapple-with-consumer-protections> (accessed April 7, 2017).

36 Assemb. B. 2693, 2015-2016 Leg. (Ca. 2016).

37 Morningstar Credit Ratings, LLC, Clearing the Air—Addressing Three Misconceptions of PACE (February 2017), available at: <http://pacenation.us/wp-content/uploads/2017/03/morningstar-addressing-misconceptions-pace.pdf> (accessed April 7, 2017).

³⁸ 15 U.S.C. § 1601 *et seq.* (1968).

³⁹ U.S. Department of Housing and Urban Development, Mortgage Letter 2016-11 (July 19, 2016), available at: <https://portal.hud.gov/hudportal/documents/huddoc?id=16-11ml.pdf> (accessed April 7, 2017).