

PUBLIC RESOURCES ADVISORY GROUP

MEMORANDUM TO: Robert LaSala, County Administrator
FROM: Public Resources Advisory Group ("PRAG")
SUBJECT: PACE Programs in Florida
DATE: September 4, 2012

The purpose of this memorandum is to provide an update of the status of PACE programs in Florida. In July 2011, the Board considered a proposal to act as an incorporator of an interlocal entity pursuant to Chapter 163.01, Florida Statutes, in order to develop and implement Property Assessed Clean Energy ("PACE") improvements. The Board did not take action on that proposal but did agree to consider participating in the program as a subscriber at a later date.

Public Resources Advisory Group has reviewed the status of PACE programs since our last report. We have reviewed materials provided by Florida PACE Funding Agency ("FPFA"), interlocal agency described above, and we have spoken with representatives of FPFA. We have also contacted representatives of other PACE programs reviewed materials provided by vendors associated with PACE programs. We have identified procurements conducted by other local governments in Florida and, within the time constraints, reviewed readily available materials presented in connection with those procurements. Our goal in conducting this review was to determine the ability to proceed under each program as well as any advantages or disadvantages that might exist in the various programs.

We began our review anticipating that the County could "license" several PACE providers, and that the Board would set standards to be met by any organization wishing to participate. However, our research has demonstrated that the costs of program implementation are significant, and that PACE providers are unwilling to fund such costs without a grant of exclusivity.

PACE Programs in Florida

There are currently three PACE programs in Florida with a statewide or regional footprint.

Program	Participating Governments	Vendors	Comments
Green Corridor	Town of Cutler Bay Village of Palmetto Bay Village of Pinecrest City of South Miami Town of Miami Shores City of Miami	Ygrene Florida Energy Fund	Plans to offer both residential and commercial; City of Miami will only permit Commercial.
Florida Green Finance Authority	Towns of Lantana and Mangonia Park	EcoCity Partners	Only commercial is offered at this time, but residential is also included in program.
Florida PACE Funding Agency	City of Kissimmee and Flagler County	Bryant Miller & Olive (BMO) instrumental in forming the program. Energy Environment & Infrastructure LLC is the 3 rd Party Administrator (dba SAIC)	



In addition, several local governments have issued or expect to issue RLIs or RFQs for PACE programs. A list of the ongoing procurements is shown here.

Local Government	Process	Status	Respondents	Comments
City of Gulfport	RFP	Under review	Information to come	This is their second solicitation process. Bids are still under review, no anticipated date of decision. Commercial only program.
Collier County	RFI	April 2012 – last action from Board was continued research of PACE project.	Ygrene EcoCity Partners	This project may be moved to Economic Development Program, but for now, no current activity. Their focus was on commercial investments.
Lee County	Request for Quote	Received statement of qualifications from vendors, but have no scheduled interviews.	District Management Services Ygrene Energy Fund Florida EcoCity Partners	Staff will present three options to the BCC: 1. Do nothing 2. Retain private vendor selected through Request for Quote 3. Subscribe to FPFA
Hillsborough County	RFI	RFI in progress/RFP to be developed (no timeframe). City of Tampa and Environmental Protection Commission (EPC) Hillsborough County may partner with the county.	Florida Pace Funding Agency Ygrene Energy Fund Florida District Management Services EcoCity Partners	Purchasing is currently at off-site location due to RNC – but can provide copies of vendor's RFI documents after Sept. 5

Program Vendors Promoting PACE in Florida

The three existing interlocal PACE programs include some, but not all, of the vendors promoting PACE in Florida. EcoCities Partners works with Demeter Fund; Erin Deady, P.A.; Renewable Funding; Eco Chamber and Special District Services, Inc. with the Florida Green Energy Works program of the Florida Green Financing Authority. Ygrene Energy Fund is the service provider for the Green Corridor Program. We have not identified Florida PACE programs utilizing either District Management Services or Renu Energy.

Status of PACE for Residential Improvements

The Federal Housing Finance Authority's ("FHFA's") opposition to the PACE program remains a serious impediment to the use of PACE to finance residential property improvements. FHFA has objected to the PACE model because the PACE assessment would have priority over mortgage liens. As required by a preliminary injunction issued by the Northern District Court of California earlier this year, the Federal Housing Finance Agency, as conservator, "directed Fannie Mae and Freddie Mac not to purchase any mortgage where PACE financing with a priority lien was placed on the underlying property. Such financing moves ahead of the pre-existing first mortgage in lien priority, and thereby subordinates Fannie Mae and Freddie Mac security interests in the property. FHFA took this action based on its determination that PACE financing arrangements present a safety and soundness concern by transferring financial risks to the regulated entities and lacking in adequate consumer protections and standards for energy retrofitting." (Federal Housing Finance Agency, News Release, June 15, 2012). As required by the rulemaking process, FHFA sought comments on their proposed rule as well as on potential alternatives. The comment period was for 45 days beginning June 15, 2012.

At the present time only the FPFA program will include residential improvements secured by assessments. The other programs (and vendors) are waiting for clarification of (or relief from) the FHFA's position.

Financing Structure and Costs

The financing structures for the programs differ; we expect to have a summary of financing structure and expected cost available at the Commission meeting on September 6.

Attachments

SURVEY CONDUCTED BY PINELLAS COUNTY PROCUREMENT

**THIRD PARTY ADMINISTRATORS FOR A PROPERTY ASSESSMENT CLEAN ENERGY (PACE) PROGRAM
PROCUREMENT RESEARCH**

Three Interlocal Agreements have been undertaken:

COUNTY	STATUS	PROJECT	VENDORS	CONTACT	NOTES
"GREEN CORRIDOR" Interlocal Agreement: Town of Cutler Bay Village of Palmetto Bay Village of Pinecrest City of South Miami Town of Miami Shores City of Miami http://ygrene.us/green_corridor	Clean Energy Green Corridor District	Town of Cutler Bay, Request for Proposal # 10-05, signed August 18, 2011	Ygrene Florida Energy Fund	John Wakefield, john.wakefield@ygrene.us	Plans to offer both residential and commercial; City of Miami will only permit Commercial.
"FLORIDA GREEN FINANCE AUTHORITY" Interlocal Agreement: Towns of Lantana and Mangonia Park http://www.floridagreenenergyworks.com/	Florida Green Energy Works Program Commercial	Town of Lantana Request for Proposal # 10-05, signed August 16, 2011	EcoCity Partners, LLC	Mike Wallander / 818-527-6511 / michael@ecocitypartners.com	Only commercial is offered at this time, but residential is also included in program.
"FLORIDA PACE FUNDING AGENCY" Interlocal Agreement: City of Kissimmee and Flagler County http://www.floridapace.gov/	Active	June 2011	Bryant, Miller and Olive (BMO) Instrumental in forming the program / Energy Environment & Infrastructure LLC is the 3rd Party Administrator (dba SAUC)	www.floridapace.gov	There is also an RFP advertised on DemandStar for a 3rd party administrator of the financial services - there was no award posted - no response from city of Kissimmee.

Agencies with PACE Projects under development:

COUNTY	STATUS	PROJECT	VENDORS	CONTACT	NOTES
CITY OF GULFPORT	Under review	Request for Proposal: Commercial Property Assessment Clean Energy (PACE) Administrator (RFP # CM-01-2001)		Fred Metcalf (Building Department) 883-1095	This is their second solicitation process. Currently, bids are still under review, no anticipated date of decision. This is for a commercial only program.
COLLIER	April 2012 - last action from Board was continued research of PACE project. RFI in progress / RFP to be developed (no timeframe). City of Tampa and Environmental Protection Commission (EPC) Hillsborough County may partner with the county.	RFI completed in 2011	Ygrene EcoCity Partners	Alexandra Sulecki 239-252-2961	This project may be moved to their soon to be established Economic Development Program; but for now, no current activity. Their focus was on commercial investments.
HILLSBOROUGH	Received statement of qualifications from vendors, but have not scheduled interviews.	Request for Information (RFI #S-204-0-2012)	Florida Pace Funding Agency Ygrene Energy Fund Florida District Management Services EcoCity Partners LC3	James Wunderle (Purchasing) 813-301-7087 wunderlej@hillsboroughcounty.org	*Purchasing is currently at off-site location due to RNC - but can provide copies of vendor's RFI documents after Sept. 5.
LEE		Request for Quote Lee Energy Efficiency Finance (LEEF) Program (#RFQ-12-05)	District Management Services Ygrene Energy Fund Florida EcoCity Partners	Bob Franceschini (Purchasing) 239-533-5457 or Tessa LeSage 239-533-2240	Audio from evaluation meeting is available on-line at their website.

Other Agencies contacted regarding any PACE Projects under development:

COUNTY	STATUS	PROJECT	VENDORS	CONTACT	NOTES
BROWARD	No PACE project. Advertised Request for Letters of Interest in May 2012.	Alternative - a Private-Public Partnership for an Energy-Efficiency Program. Advertised Request for Letters of Interest in May 2012.		Nancy Gasman 954-519-1295	Their agency is pursuing a private-public partnership for an Energy-Efficiency Program, but it will be outside of PACE.

PACE RESEARCH:

THIRD PARTY ADMINISTRATORS FOR A PROPERTY ASSESSMENT CLEAN ENERGY (PACE) PROGRAM PROCUREMENT RESEARCH

There are three interlocal agreements established: Green Corridor, Florida Green Finance Authority and Florida Pace Funding Agency.
There are four procurements in various stages: City of Gulfport, Collier County, Hillsborough County, Lee County - none of the procurement analysts had an established timeframe for completion.
Other agencies were contacted - responses varied from researching to no plans to pursue a PACE program.

DOCUMENTS INCLUDED:

Interlocal Agreement for The Florida Green Finance Authority
Interlocal Agreement for the Town of Cudler Bay, Village of Palmetto Bay, Village of Pinecrest, City of South Miami, Town of Miami Shores and City of Miami
Resolution for City of Miami to join the Green Corridor Property Assessment Clean Energy District
White paper from Brevard County "Property Assessed Clean Energy Financing Options for Brevard County, Florida
Print out from website PACENow regarding the three interlocal agreements in Florida.
Florida Statute 183.08, Supplemental authority for improvements to real property
Original Notes

WEBSITES:

Green Corridor	http://ygrene.us/fll/green_corridor
Florida Green Finance Authority	http://www.floridagreenenergyworks.com/
Florida Pace Funding Agency	http://www.floridapace.gov/
Pace Now (guidance package for developing a PACE program)	http://pacanow.org/act-now/start-a-program/

Talking points:

Programs falling outside procurement in either agency's Housing Departments / Economic Development / Environmental Departments.
The responsibilities for the agencies that sponsor the program and vendors who administer was unclear.
Commercial vs Residential / the rates of residential loans were at 7% and agency didn't think they would service those that actually could benefit from the program (as loan through banks are lower).
Confusion on the requirement of the Interlocal Agreements vs a separate procurement for the entity - whether established interlocal agreements/vendors were the only ones that could provide service.
There isn't any kind of history or proof of services from Vendors / no established program. Many stated they were waiting to see what happened before they proceeded.
Question as to whether any program is actively accepting applicants.
None of the agencies had an anticipated start date for their project or even if they would come into existence.

THIRD PARTY ADMINISTRATORS FOR A PROPERTY ASSESSMENT CLEAN ENERGY (PACE) PROGRAM
PROCUREMENT RESEARCH

Other Agencies contacted regarding any PACE Projects under development:

COUNTY	STATUS	PROJECT	VENDORS	CONTACT	NOTES
BREVARD	None			Leslie Rothering (Procurement) 321-617-7390 leslie.rothering@brevardcounty.us Ashley Hepburn (Budget) 321-633-2153 (Gregory Spearman (Purchasing) 813-274-8855 gregory.spearman@tampagov.net	Provided their white paper on PACE research, April 2012.
CITY OF TAMPA	Researching				Researching - may be a part of Hillsborough's procurement
JACKSONVILLE	None			Kevin Grant 904-255-7240 kgrant@coj.net	Currently, reviewing requirements of a PACE program.
LEON	None	LEAP - Leon Energy Assistant Program (pilot program) - Office of Sustainability - 850-606-3500		Shelly Kelly (Purchasing) 850-606-1600	No similar program from Procurement.
MARION	None			Susan Olsen (Procurement) Brevard County BCC 352-671-8444 susan.olsen@marioncountyfl.org	No similar procurement.
MIAMI-DADE	No Response			Basia Pruna (Purchasing) 305-375-5018 bpruna@miamidade.gov	Looking into - no response provided.
ORANGE	None			Joe Benjamin (Purchasing) 407-836-5664	No similar program.
OSCEOLA	None			Wille Valez (Procurement) Osceola County BCC 407-742-0937 wvlez@osceola.org	No similar procurement.
POLK	No Response			Chris Rosti (Procurement) 863-534-6706	Left voicemail - no response.

PUBLIC RESOURCES ADVISORY GROUP

MEMORANDUM TO: Robert LaSala, County Administrator

FROM: Public Resources Advisory Group ("PRAG")

SUBJECT: Florida PACE Funding Agency

DATE: July 5, 2011

Public Resources Advisory Group has reviewed the details of the proposal that Pinellas County act as an incorporator of an interlocal entity pursuant to Chapter 163.01, Florida Statutes, in order to develop and implement Property Assessed Clean Energy ("PACE") improvements. This proposal was presented to the Board of County Commissioners by Susan Churuti, Esq. of Bryant Miller Olive ("BMO") at the April 26, 2011 work session; a copy of the presentation is attached to this memorandum. Pursuant to the proposal, Pinellas County would adopt two resolutions. The first would authorizing the execution of an interlocal agreement relating to the establishment of the Florida Pace Funding Agency (an interlocal agency to be formed pursuant to Chapter 163.01, Florida Statutes) (the "Agency"), appoint the City Manager of the City of Kissimmee as the interim executive director of the Agency, and direct the executive director of the Agency to execute a master bond resolution authorizing the issuance of revenue bonds or obligations for the purpose of providing funds to finance qualifying improvements. The second resolution retains BMO as Special Counsel to the Agency and directs the interim executive director to execute a retainer agreement with BMO (jointly, the "Pinellas Resolutions").

In the time since the April 26 workshop, the City of Kissimmee ("Kissimmee") and Flagler County ("Flagler") adopted the resolutions described above. The Agency has been formed, the Charter Agreement has been executed, and the master bond resolution and the retainer agreement have been approved by the Agency. The item for discussion by Pinellas County is whether or not to join Kissimmee and Flagler as an incorporator of the Agency with the ability to appoint one of the initial members of the Agency Board of Directors.

This memorandum does not provide a comprehensive analysis of the advantages, disadvantages or need for a PACE Program in Pinellas County, but a discussion of the advantages and disadvantages of being a participant in the formation of the Florida PACE Funding Agency.

Background

The PACE program is a micro-loan program offered by local governments to property owners to enable those owners to finance qualified energy conservation improvements. Both residential and commercial properties are eligible for the program. Property owners opt into a special assessment district created by the city, county, or region and receive a loan to finance energy improvements to existing buildings. The loan is repaid through an annual assessment on the owner's property tax bill. The value of the investment stays with the property.

The Florida legislation authorizing the PACE program, Chapter 163.08 Florida Statutes, was implemented in 2010 and provides authority for the use of special assessments to finance the installation of renewable energy, energy efficiency improvements and wind resistance improvements on residential, commercial and industrial buildings. The assessments can be paid over the functional life of the improvement as an on-going assessment on property tax bills. Implementing PACE is intended to facilitate energy conservation, encourage the use renewable energy resources and encourage hurricane hardening of structures through the available of low cost loans. The PACE program is intended to stimulate economic activity in a variety of sectors including alternative energy, energy conservation, building materials and products.



There are currently 24 states with PACE legislation but there are few active programs at the present time. A list of the most well established programs is attached as Exhibit B. There is currently a serious impediment to the use of the PACE program for improvements on residential properties. On July 6, 2010, the Federal Housing Finance Authority (FHFA) stated their opposition to the PACE program because the PACE assessment would have priority over mortgage liens. FHFA ordered Fannie Mae, Freddie Mac, and the Federal Home Loan Banks to (1) adjust LTV ratios to determine maximum PACE financing allowed, (2) tighten standards for all borrowers in areas where PACE programs exist, and (3) require borrowers to seek permission from lenders prior to obtaining PACE financing. Florida's implementing legislation for PACE anticipated this action and specifically states that any provision in a mortgage which allows for acceleration of the mortgage solely as a result of participating in the PACE program is unenforceable. (Section 163.08, Florida Statutes). The enforceability of this provision will be addressed in the validation of the PACE financing program. FHFA's position has had a chilling effect on PACE programs throughout the country; since the July pronouncement no new residential PACE programs have been implemented and existing programs are on hold. PACE proponents attribute the slow development of PACE programs to other factors in addition to the FHFA opposition. State and local government financial resources are strained, and costs of startup and implementation are high. There is no uniformity of standards among programs. The Florida PACE Financing Agency has been designed to address these issues.

Proposal to Form Florida Pace Funding Agency

BMO is proposing the establishment of a statewide platform to implement a program for funding, financing and providing clean energy, renewable energy and wind resistance improvements and will file for validation of the issuance of bonds pursuant to the master bond resolution. The Agency was formed at the end of June by Kissimmee and Flagler, and the incorporating documents allow for Pinellas County to join as a third incorporator. BMO states that "this is a leadership opportunity and the incorporators will be recognized for their efforts to establish the first viable statewide PACE Program" (BMO Executive Summary) and, in the Executive Summary cite the following benefits for the County:

- The ability to make sure a PACE program is established and operated in a manner providing the greatest benefit to each incorporating local government (as well as other future participating governments);
- Avoids substantially all of the costs of any initial program set-up that each incorporator might otherwise expend;
- Implements and takes a large, positive step forward, locally and statewide, in terms of achieving the job creation ability within the private sector that a PACE program can achieve;
- Provides a means to insulate both the incorporating local governments and any later participating local governments from liability;
- Allows for an expedited judicial validation of this new market before any eager constituents sign up or any funds are borrowed to underwrite the provision of the subject energy and wind resistance improvements.

Financing of PACE Improvements and Program Expenses

The Agency will borrow to fund the PACE loans. The master bond resolution will authorize the issuance of not to exceed \$2,000,000,000 of revenue bonds in various series. Property assessments will be sized to repay the debt, with interest plus the amount necessary to pay the Agency's expenses, currently expected to be between 1% and 1.5%. Agency expenses will include all costs of implementing and administering the program, including fees for program administration and legal services (as described below). The Charter Agreement of the Agency also authorizes a surcharge of up to 1% on each property assessment to cover the Agency's expenses, including start-up costs.



The retainer agreement with BMO includes (1) an initial fee of \$500,000 as payment for program development costs, (2) an ongoing retainer of 0.10% annually of assessments outstanding, but not less than \$25,000 per month, and (3) a closing fee on each assessment of 1%. These fees are payable solely from surcharges to individual, voluntary program participants over time, or from advances or other funds paid to the Agency through grants, rates, fees, charges or contributions, if any, from program participants, third party administrators, program vendors or similar funding sources *only as, if and when such funds are available to the Agency*. (Retainer Agreement) The Retainer Agreement also provides for BMO to serve as bond counsel to the Agency, and the fee for such services will be \$1.50 per \$1,000 of bonds actually issued.

Special Counsel	
Initial invoice	\$500,000
Ongoing fee for services	Not less than 0.10% of each property assessment with minimum of \$25,000/month
Closing fee	1% of assessment amount
Expenses	Actual
Bond Counsel	
Transaction fee	\$1.50/ per \$1,000 of bonds
Expenses	Actual

Analysis of Proposal

The Agency has been created as a result of the actions by Kissimmee and Flagler, but the interlocal agreement does provide for the addition of a third incorporator. The creation of the Agency is just the first step in the implementation of a PACE Program, and there is no certainty that the program can be implemented. Notwithstanding the fact that BMO proposes to validate the proposed revenue bonds, the opposition that FHFA, Freddie Mac, Fannie Mae and the Federal Home Loan Bank have to the priority of PACE property assessments is a significant impediment to use of the program for residential properties.

The Special Counsel Retainer Agreement described above has been adopted by Kissimmee and Flagler, and BMO has been retained as Special Counsel and Bond Counsel to the Agency. The fees described above have been approved. As described above, all fees and expenses, except for the Bond Counsel Transaction Fee which will be paid at the time of delivery of the bonds, are due only *as, if and when funds are available to the Agency*. At this time we are not able to confirm that the Special Counsel proposed by BMO are "reasonable and valuable to the Agency in excess of such amount" as stated in the proposed resolution nor are we able to determine the impact of these and other fees and costs of the Agency on the attractiveness of the PACE Program to property owners.

The structure of the Agency protects the County from legal exposure in connection with the implementation of the PACE program, but there are intangible risks just as there are intangible rewards. The County will not incur any direct financial cost for participation in the Agency, but such participation will require time and input from County staff. The Agency's first actions will include the procurement of a program administrator. We expect that this process will be time consuming and fiercely competitive given the potential size of the program. The selection of financial partners will also generate significant interest because of the large scale of the program and the potential fees for participants. The financing program will likely include financial instruments not typically used by the County given the size and structure of PACE program, and the County would have to reconcile the use of those instruments with its own debt and investment policies.

We recognize the value of the PACE program and agree that a statewide platform is appropriate for the success of this program in Florida. The County may conclude that the formation of the Agency and development of the PACE program is of significant value, consistent with the County's strategic plan thus warranting County participation. Alternatively, the County can participate in the PACE program as a subscriber and forgo involvement in Agency's development. If the County decides to participate in the formation of the Agency, we do recommend a significant review of proposed fees, including a review of the fees of other existing PACE programs.

Attachments