

Florida  
**PACE**  
Funding Agency

Information Statement

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## Introduction

The Florida PACE Funding Agency (the "Agency") presents a statewide uniform and scalable platform for the funding and financing of energy conservation, renewable energy and wind resistance improvements repaid through the imposition of voluntary special assessments against the real property benefitted by the improvements. This type of financing program – known as PACE which stands for "property assessed clean energy - is entirely voluntary and allows interested private property owners an alternative to other types of financing. Unlike PACE programs in other states, the Florida statute also importantly allows for the financing of storm hardening and wind resistance improvements.

## PACE Overview

PACE programs offer a wide range of benefits, not only for the property owner who decides to obtain financing for qualifying improvements to the owner's property, but also for the broader public and the state and local governments involved in achieving what the Legislature describes as a compelling state interest. PACE programs can play an important role in hardening Florida buildings against [hurricane events](#), reducing local [greenhouse gas](#) emissions, promoting [energy efficiency](#) improvements in its buildings, making the shift to [renewable](#) sources of [energy](#) more affordable, reducing [energy](#) costs for residents and businesses, and, perhaps most notably, [encouraging local](#) private sector [economic activity](#) and [job creation](#).

Since development and attempted implementation of early PACE programs prior to 2011 in California and Colorado, the concept gained widespread attention and has been accepted at all levels of government with at least thirty-three (33) states, including Florida, adopting legislation expressly authorizing PACE financing. In Florida, qualifying improvements include renewable energy, energy efficiency and wind resistance improvements for buildings and improved properties. The funding is repaid in annual installments over a period of years (which should not exceed the useful life of the improvements) through a special assessment collected on the annual property tax bill. The acquisition of the improvements and the financing thereof through a special assessment is completely voluntary and only initiated upon the application and written consent of interested property owners. The yearly savings in utility costs resulting from energy-related improvements can exceed the amount of the annual assessment payment, which incentivizes property owners to seek the improvements; but is dependent upon disciplined use once installed. Wind resistance improvements can be an attractive means to avoid windstorm repair costs or lower casualty insurance premiums. Rebates and credits may also be available which reduce the overall cost and increase the appeal of making the improvements.

The fact that the amount financed is repaid through a special assessment is fundamental for several reasons. The assessment is secured by the property and is not

subject to acceleration by the Agency upon sale or transfer of the property, which can enable a new property owner to merely step into the place of the previous owner and assume responsibility for making the annual payment.<sup>1</sup> Special assessments are on parity with property taxes. The lien arising by virtue of the assessment is by general law co-equal with the lien of city and county property taxes and senior to all other liens and titles, including mortgages. This seniority status diminishes the risk of non-payment to the issuing local government involved, and is therefore attractive to the credit markets.

In a typical special assessment financing, the issuing local government charges for interest and costs associated with the amount financed to offset its borrowing costs and expenses incurred in administering the financing. With respect to a PACE assessment, the interest rate may be higher or lower than one otherwise available from a bank or commercial lending institution. More importantly, an interested property owner may simply be unable to find residential or commercial financing at all, or the retail rates and/or terms available may be such that the improvements are not economically feasible. The concept of PACE assessments presents an alternative to private property owners, which is why the relevant general law authority in the Florida Statutes is entitled "Supplemental Authority for Improvements to Real Property" or the "Supplemental Act" for short. In fact, the terms "property assessed clean energy" or "PACE" do not appear in the statute.

Florida local governments arguably possess home rule authority to develop and offer PACE programs, in the same way they possess home rule authority to levy and collect any other special assessment (e.g., assessments imposed to fund infrastructure and services related to roads, storm water, water, sewer, fire protection, etc.). However, the Florida legislature was smart to nonetheless adopt specific enabling legislation that by general law expressly authorizes PACE financing and intentionally addresses and resolves statewide the issues and mechanics that have hampered the success of programs in other states.

### **Florida PACE Legislation**

In 2010, Florida enacted Section 163.08, Florida Statutes (the "Supplemental Act"), to provide general law authority to use special assessments to finance "qualifying improvements" to real property. The Supplemental Act sets forth several state policy objectives related to energy efficiency and wind resistance improvements, and provides legislative determinations concerning the burdens relieved or special benefits conveyed to the assessed property by the delivery and financing of qualifying improvements. The act is by its terms "additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority." Section 163.08(16), Florida Statutes. The exemplary list of qualifying improvements set forth in the Supplemental Act is extensive (not exhaustive) and includes not only energy efficiency and renewable energy improvements but also wind resistance improvements in recognition of the heightened risk of property damage presented by the state's high wind potential. Section 163.08(2)(b), Florida Statutes. The Supplemental Act has created and authorized the opportunity for a non-exclusive, uniform, scalable and statewide

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<sup>1</sup> Lenders to prospective buyers or the buyers themselves may require prepayment upon sale. The FHFA, which is the conservator of Fannie Mae and Freddie Mac, will not permit those agencies to buy mortgages if there is a PACE assessment on the property.

program pursuant to general law that may easily be accessed by property owners throughout Florida.

The drafters of the Supplemental Act undertook a careful analysis of PACE programs elsewhere around the country to capitalize on successes and avoid missteps in other jurisdictions. The text of the Supplemental Act includes many important and unique general law features and safeguards for the Florida program:

- Provides that special assessments imposed thereunder are by definition "non-ad valorem assessments" which may only be collected on the annual property tax bill in accordance with Section 197.3632, Florida Statutes.
- Provides for the execution of financing agreements with private property owners which evidence due process and provide constructive recorded notice and document both the terms and conditions pursuant to which qualifying improvements are financed and the property owner's consent to the imposition of the assessment.
- Establishes specific eligibility and credit limits and imposes limits for assessment amounts that cannot be exceeded without an energy audit demonstrating energy savings commensurate with the increased assessment amount.
- Renders unenforceable, as a matter of public policy, any provision in any agreement between a mortgagee and a property owner that allows for acceleration of payment of the mortgage or other unilateral modification solely as a result of entering into a financing agreement for a qualifying improvement.
- Provides that the mortgage escrow, if any, can be increased to include the annual assessment as part of the owner's monthly mortgage payment, which effectively converts the annual cost to a monthly cost.
- Addresses property owner eligibility for financing which requires (1) a record of on-time payment of property taxes, (2) no involuntary liens, judgments or similar involuntary liens, (3) demonstration that all mortgages have been paid timely and are current, (4) a 30-day prior notice to the mortgage holder (so the mortgage holder could increase the escrow, if applicable), and (5) the execution and recording of a financing agreement which evidences details and the existence of the assessment in the Official Records.
- Authorizes the issuance of bonds or other forms of indebtedness for funding qualifying improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.
- Allows for coordination or partnership with one or more local governments for the purpose of providing funding and financing of qualifying improvements.
- Authorizes administration by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- Deliberately and expressly allows for a separate legal entity like the Florida PACE Funding Agency to act as a special purpose local government and provide its funding and financing services statewide.

The express authority to collaborate with other local governments and to engage third party administration expertise allows the Florida program to avoid various practical and economic disadvantages experienced by cities and counties around the country which have undertaken individual, localized programs with less than robust success. An

ad hoc, jurisdiction-by-jurisdiction approach has resulted in a lack of uniformity of standards from one local government to another, redundant expenditures of resources for startup and implementation costs and, depending on the size, population and interest level of property owners in a given community, an inability to create sufficient demand to attract significant funding at favorable and cost-efficient terms. Accordingly, individual local or small regional PACE programs have experienced very limited success.

A statewide program is more advantageous for and attractive to potential vendor participants because it offers a uniform set of standards with respect to construction or installation of the improvements and program administration. The breadth and scope of a statewide program can more effectively attract capital markets and large scale private sector administration, foster origination partnerships among commercial and industrial groups, educators, energy auditors, contractors, suppliers and installers – and naturally facilitate the creation of local private sector jobs and economic activity. The origination process is complex and requires marketing and consumer protection considerations driven by extraordinary concerns in emerging credit markets – all not well suited to local government skills and budgets.

Recognizing these advantages, the Florida PACE Funding Agency was specifically structured to take advantage of general law provisions to remove liability from local governments for implementation, provide uniform program parameters which are designed to be attractive to national credit markets and improvement vendors alike, develop economies of scale and scalable program attributes that allow for easy and cooperative embrace by local governments so that property owners desiring to avail themselves of PACE programs efficiently underwrite the entire cost of those programs as opposed to the general taxpayers. The Agency also provides an avenue to carefully implement the Supplemental Act and advance the ‘compelling state interests’ and statewide policy objectives set forth therein. Of more important note, the Agency has learned that available funding must be matched by consumer protection compliance, contractor education and focused outreach to achieve its service mission.

### **Florida PACE Funding Agency**

The Florida PACE Funding Agency was created in June 2011 through an interlocal agreement, as amended, between Flagler County and the City of Kissimmee (the "Charter Agreement") for purposes of capitalizing on the advantages of a statewide approach to PACE financing. The Agency and its statewide platform is the result of the effort by local governments with the needs of local governments in mind. A recorded copy of the most recently updated Charter Agreement is included on the Agency’s website. Flagler County and the City of Kissimmee effectively are the ‘incorporators’ of this separate and focused legal entity. Creation of an entity of this nature is expressly authorized by Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act. The Agency’s mission is to facilitate the implementation, planning, development, funding, financing, marketing and management of a uniform statewide platform so that counties and cities can easily and economically take advantage of a scalable program for their residential and commercial property-owning constituents. The Agency is authorized to and has entered into an indenture allowing for up to \$800 million in issuance of bonds to provide funds with which to finance qualifying improvements and to make available its funding program throughout Florida. The Agency is ready to provide this funding and

financing service to property owners statewide, and always seeks to coordinate and communicate with interested general purpose local governments (cities and counties) to advance this compelling state interest.

The Agency has carefully modified its approach to make it easier to encourage general purpose local governments (cities or counties) to be more accepting of its immediately available, uniform program to provide immediate positive local impact without cost or liability to the taxpayer base. The intended constituency of the Agency, in many respects, is both private property owners and general purpose local governments to create local markets with little or no cost to local government treasuries. This allows a city or county without any expenditure or liability to embrace or consent to interlocal activity with a completely separate special purpose local government which specializes in providing this financing the Legislature encourages and describes as compelling state interest. This Agency platform allows local governments to obtain the advantages of a PACE program and access capital markets without having to assemble extensive subject matter expertise, implement or deploy individual programs or individually seek or back-stop capital for their constituents. There are now at least three other separate legal entities that have formed to issue debt to provide such funding. As a matter of policy, the Agency embraces an open or non-exclusive approach, desires competitive choices for interested property owners and wants to provide its services and functions along with the several other PACE issuers in any and every jurisdiction. The Agency's objective is to be the best PACE program available.

In most every instance, all the Agency seeks is documentation of municipal acceptance or acknowledgment of its presence as a completely separate specialized local government serving under general law authority provided in the Supplemental Act. That can be accomplished in several ways. The easiest is a simple resolution of the municipality. The use, form and purpose of an interlocal agreement approach by the Agency has also been judicially validated and approved. The Agency will not require, but prefers a simple interlocal agreement documenting, clearly stating the general purpose local government has no liability emanating from the Agency – ever. A typical interlocal agreement does that and includes a friendly covenant to professionally cooperate and communicate with a county or municipality served. The Agency simply presents an attractive non-exclusive means to achieve the compelling state interest described in Section 163.08(1), Florida Statutes.

One of the most important advantages of the program offered by the Agency is limited liability for all the local governments relative to the Agency's Program. No other program in Florida can boast of the same degree of express protections provided by the Agency in this regard. Both the Charter Agreement of the Agency and any interlocal agreement will emphasize that any other local government is not responsible for actions or liabilities incurred by the Florida PACE Funding Agency. As well, each interlocal agreement the Agency employs expressly documents this insulation of liability provided pursuant to general law and validated by the court. All the foregoing is in addition to the status of any local government and the Florida PACE Funding Agency, as each also possesses sovereign immunity, which is not waived. All parties dealing with the Florida PACE Funding Agency will be notified in writing that the actions, debts, obligations and responsibilities of the Florida PACE Funding Agency are those of the Agency and no

other local government. These layered limitations of liability were also uniquely and expressly plead by the Agency and judicially validated and confirmed.

The Agency has been established by a charter, adopted a master bond resolution and successfully validated its ability to separately and independently issue bonds to fund the various voluntary financing agreements with interested property owners entered into pursuant to the general law authority of the Supplemental Act, together with a litany of matters and issues associated with the statutorily authorized non-ad valorem assessments which will comprise all or substantially all of the revenues to repay any bonds issued by the Agency.

### **Implementation**

Implementation of the Agency's program necessarily requires the appointment and selection of officials and consultants with a wide range of professional backgrounds.

**Board of Directors:** On November 7, 2011, the incorporators of the Agency appointed Cheryl Grieb, Barbara Revels, and Edward Marquez to serve on the Board of Directors for the Agency, each of whom possess a wealth of local government, real estate and financial experience. Mr. Marquez, the Deputy Mayor of Miami-Dade County, has since resigned and the Agency filled this seat with Jim Ley. Ms. Grieb and Ms. Revels were reappointed to subsequent terms. Mr. Ley is the well-known former County Administrator of Sarasota County, Florida. The Agency is currently undergoing a search to expand its Board from three (3) to five (5) members.

**Cheryl L. Grieb** then served as Vice Mayor and Commissioner of the City of Kissimmee City Commission, and was subsequently elected to the Osceola County Commission. Concurrently since 2000, Ms. Grieb has been the Owner/Manager of Olde Kissimmee Investments, Inc., specializing in commercial and residential real estate.

**Barbara S. Revels** served as a Commissioner on the Flagler County Board of County Commissioners from 2008 to 2016. She is a general contractor who serves as the president and owner of Coquina Real Estate & Construction, Inc., a full service real estate company and general contracting firm. Ms. Revels has previously served as the President of the Florida Homebuilders Association.

**Jim Ley** is engaged in private consulting. He is well-recognized in Florida local government circles having served as the Sarasota County, Florida, administrator for fourteen years, and previously as the Clark County, Nevada, administrator for several years. He recently was appointed to the Sarasota County Public Facilities Financing Advisory Board.

**Executive Director and General Counsel:** Mike Steigerwald serves as Executive Director and Don Smallwood serves as General Counsel and Assistant Secretary to the Agency. Mike Steigerwald is the City Manager of the City of Kissimmee, and Don Smallwood is the City Attorney for the City of Kissimmee.

**Counsel:** The Agency has engaged Mark G. Lawson, P.A., to provide special or program counsel services to the Agency, and Akerman LLP to provide bond counsel services to the Agency.

**Financial Advisors:** The Agency, through a public procurement process, has selected the PFM Group, FirstSouthwest and Hilltop Securities, LLC (formerly Southeastern Investments) to serve as co-financial advisors to the Agency.

**Separation of Administration and Financial Service Providers:** Since inception the Agency and its incorporators have been careful to separate and keep the contract administration and funding party contractual arrangements segregated. This policy aspect serves the Agency well and continues.

**Third Party Administrator:** Pursuant to an RFP process, the Agency initially selected and contracted with an entity now known Leidos Engineering, LLC (NYSE: LDOS) (“LDOS”) to provide third party administration services and Partners Reinsurance (NYSE: PRE) (“PRE”) as the Agency’s initial funding party. Industry-wide the origination and financing process has proven challenging on a large scale; however, in 2016 the Agency made good progress attracting a well-informed successor to LDOS as the Agency’s program administrator pursuant to the Agency’s financing indentures. This now fully-completed transition was professional, congenially implemented by all parties involved, and applauded by the Agency. By approval of the Agency, the successor third party administrator is Counterpointe Energy Solutions (FL) LLC (“CESFL”), composed of the same expertise and principals as the party that served as the investor servicer for PRE, and accordingly, well familiar with the (1) the Agency, (2) Florida, and (3) the operations of LDOS and PRE. The Counterpointe family of corporate entities operates in multiple states under the AllianceNRG Program banner for residential property owners and the CounterpointeSRE Program banner for commercial property owners and brings, among other things, to the Agency (1) more specialized energy securitization expertise, as well as (2) an extraordinary, tested, and working internet-driven origination platform which interfaces seamlessly with the Agency. CESFL has also moved its headquarters offices to Boca Raton, Florida, and recently opened administrative offices in Maitland, Florida.

**Financial Services Providers:** From December 2011 through most of 2013, the Agency and its financial advisors investigated, solicited, considered and received numerous financing and funding proposals and options from every reasonably imaginable source. From 2014 to 2016 an initial funding partnership with PRE and its investor servicer, Counterpointe Energy Solutions, provided the initial funding to the Agency to fund its Program well into early 2016. As a part of the acquisition of PRE by EXOR N.V., one of Europe’s leading investment companies, announced in 2015, the Agency and its advisors successfully worked with CounterPointe Energy Solutions to structure alternative residential and commercial funding sources. The currently operative bond indenture and overall financing closed on April 26, 2016. Funding is now being provided through two separate sources by approval of the Agency: (1) CounterPointe Energy Solutions Residential, LLC (“CESR”) which is a separately structured compendium of residential PACE financing providers, and (2) CounterPointe Sustainable Real Estate LLC (“CSRE”) which is working jointly with Hannon Armstrong Sustainable Infrastructure Capital, Inc. (NYSE: HASI) (“HASI”), a Maryland based real estate investment trust which focuses on energy efficiency markets. HASI has specific interest in being a funding party for commercial PACE projects nationwide. The strong PACE Program put in place by the Agency, now coupled with (a) a more diverse and competitive funding

approach, and (b) a stream-lined Internet origination solution facilitated by Counterpointe Energy Solutions and its affiliates, further assists the Agency in better serving property owners interested in this new market and to carefully spur local economic activity in communities throughout Florida.

With the careful reset of program administration consultants and professionals complete, the Agency is in a better position to share and engage in standard and brief interlocal agreements with interested local governments and commence a much more focused outreach to local contractors immediately. Bringing the focus of the Agency to any city or county can now be done by simple resolution of the governing body of any local government.

### **Validation**

The Agency, as one of its initial fundamental actions, filed its Validation Complaint in July 2011 seeking judicial approval to issue as much as 2 billion dollars in bonds to be issued from time to time as funds are needed. The dollar amount was premised upon a conservative economic analysis that there are at least 3,132,600 buildings which are over twenty (20) years old in Florida and likely candidates for retrofit or energy-related or wind resistant improvements. The economic analysis was performed by Real Estate Research Consultants, Inc., of Orlando, Florida (now GAI Consultants), and was based upon the assumption that if only five percent (5%) of the owners of such estimated number of buildings voluntarily apply for such retrofit improvements over the next several years, the necessity for potential aggregate of bonds issued in several series on an as needed basis could easily equal or exceed 2.35 billion dollars.

At the conclusion of the bond validation proceeding on August 25, 2011, the Circuit Court in and for Leon County, Florida, issued its Final Judgment validating and confirming the authority of the Agency to issue the bonds, the Charter Agreement creating the Agency, the validity of the financing agreements entered into with property owners, the Supplemental Act and the non-ad valorem assessments imposed thereunder, the execution and validity of interlocal agreements with local governments throughout Florida and all matters connected therewith. A copy of the Final Judgment is included on the Agency's website. The validation process resolves with finality the Agency's authority to administer its statewide program and clarified the unique prerequisites and provisions in the Supplemental Act that more closely follow guidelines then provided by the Office of the Controller of the Currency, which had suggested pragmatic guidance to its regulated banks for PACE related programs nationwide. The validation was not appealed and is final. Its effect is statewide.

## **Enforcement and Collection of Assessments**

The following material provides a detailed description of the enforcement mechanism for special assessments (including those levied under the authority of the Supplemental Act) which are collected pursuant to the uniform method set forth in Section 197.3632, Florida Statutes. Assessments collected thereunder are not enforced through foreclosure or similar courtroom proceedings, but rather through the statutory tax certificate/tax deed process administered by the county tax collector on behalf of the local government (in this case, the Agency) imposing the assessment. This is markedly more fair to the property owner.

The Supplemental Act provides that special assessments imposed thereunder shall be collected by the uniform method set forth in Section 197.3632, Florida Statutes, which provides that the assessments must be collected in the same manner and at the same time as county and municipal ad valorem taxes.<sup>2</sup> The statutes in Chapter 197 relating to enforcement of property taxes provide that such taxes become due and payable on November 1 of the year when assessed and constitute a lien upon the land from the previous January 1 of such year. The county tax collector is to bill such taxes together with all other ad valorem taxes and non-ad valorem assessments and landowners are required to pay all such taxes without preference in payment of any particular increment of the tax bill, such as the increment owing for the special assessments. Upon receipt of moneys from the tax collector, such moneys are typically deposited into whatever account or fund has been established to ensure timely repayment of any bonds or loans secured by the special assessments.

All county, municipal, school and special district taxes, assessments and voter-approved ad valorem taxes levied to pay principal of and interest on bonds, including any PACE-related special assessments, are payable at one time. If a taxpayer does not make complete payment, he cannot designate specific line items on his tax bill as deemed paid in full. In such cases, the tax collector cannot by law accept such partial payment and the partial payment is returned to the taxpayer. Accordingly, in order to pay the property taxes when due, a property owner must by law also pay all non-ad valorem assessments due. This feature is obviously attractive to credit markets who seek pledged revenues in the form of non-ad valorem assessments.

If the tax bill is paid during November when due or during the following three months, the taxpayer is granted a variable discount equal to 4% in November and decreasing 1% per month to 1% in February. All unpaid taxes become delinquent on April 1 of the year following assessment, and the tax collector is required to collect taxes prior to April 1 and after that date to institute statutory procedures upon delinquency to collect assessed taxes. Delay in the mailing of tax notices to taxpayers may result in a delay throughout this process. It is important to note that assessments imposed pursuant to the

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<sup>2</sup> While some Tax Collectors and Property Appraisers in the various counties initially suggested that they may disagree with the PACE concept on a policy basis, the validity of a non-ad valorem assessment is exclusively the responsibility of the local government imposing the assessment. Local Tax Collectors and Property Appraisers have a ministerial duty to collect the assessment, regardless of their individual view on the policy behind the assessment. *Escambia Cnty. v. Bell*, 717 So. 2d 85 (Fla. 1st DCA 1998). The Florida Department of Revenue has also confirmed this axiom in several informal advisories.

Supplemental Act are not subject to the early payment discount. See Section 163.08(4), Florida Statutes.

Collection of delinquent taxes is based upon the sale by the tax collector of "tax certificates" and remittance of the proceeds of such sale to the local government for payment of the amounts due. In the event of a delinquency in the payment of taxes, the landowner may, prior to the sale of tax certificates, pay delinquent taxes plus an interest charge of 18% per annum on the amount of delinquent taxes. If the landowner does not act, the tax collector is to sell tax certificates to the person who pays the taxes owing and interest thereon and certain costs, and who accepts the lowest interest rate to be borne by the certificates (but not more than 18%). If there are no bidders, the county is to hold, but not pay for, tax certificates with respect to the property, bearing interest at the maximum legal rate of interest. The county may sell such certificates to the public at any time at the principal amount thereof plus interest at the rate of not more than 18% per annum and a fee. The demand for such certificates is dependent upon various factors that include the rate of interest which can be earned by ownership of such certificates and the value of the land which is the subject of such certificates and which may be subject to sale at the demand of the certificate holder.

Any tax certificate in the hands of a person other than the county may be redeemed and canceled by the person owning or claiming an interest in the underlying land, or a creditor thereof, so long as such redemption occurs prior to the time a tax deed is issued. The person effecting such redemption must pay the face amount of the certificate and interest at the rate borne by the certificate plus costs and other charges. Regardless of the interest rate borne by the certificates, persons redeeming tax certificates must pay a minimum interest rate of 5%, unless the rate borne by the certificates is zero percent. The proceeds of such redemption are paid to the tax collector who transmits to the holder of the tax sale certificate such proceeds less service charges, and the certificate is canceled. Redemption of tax sales certificates held by the county is effectuated by purchase of such certificates from the county, as described in the preceding paragraph.

The private holder of a tax sale certificate which has not been redeemed has seven years from the date of issuance in which to act against the property. After an initial period of two years has passed, during which time action against the land is held in abeyance to allow for sales and redemptions of tax sale certificates, such holders may apply for a tax deed. The applicant is required to pay to the tax collector all amounts required to redeem outstanding tax certificates covering the land not held by him, and any omitted taxes or delinquent taxes, plus interest. If the county holds a tax certificate and has not succeeded in selling it, the county must apply for a tax deed after the county's ownership of such certificate for two years. The county pays costs and fees to the tax collector but not any amount to redeem other outstanding certificates covering the land. Thereafter, the property is advertised for public sale.

In any such public sale, the private holder of the tax certificate who is seeking a tax deed for non-homestead property is deemed to submit a minimum bid equal to the amount required to redeem the tax certificate, and charges for cost of sale, redemption or other tax certificates on the land, and the amounts paid by such holder in applying for the tax deed, plus interest thereon. In the case of homestead property, the minimum bid must

include, in addition to the amount of money required for the opening bid on non-homestead property, an amount equal to one-half of the assessed value of the homestead. If there are no other bidders, the holder receives title to the land, and the amounts paid for the certificate and in applying for a tax deed are credited toward the purchase price. If there are other bidders, the holder may enter the bidding. The highest bidder is awarded title to the land. If there are no bidders, the county may purchase the land within ninety (90) days of the offering for public sale for the minimum bid. After ninety (90) days have passed, any person may purchase the land by paying the minimum bid to the county. Taxes and assessments accruing after the date of public sale do not require repetition of this process but are added to the minimum bid. The portion of proceeds of such sale needed to redeem the tax sale certificate (and all other amounts paid by such person in applying for a tax deed) are forwarded to the holder thereof or credited to such holder if he is the successful bidder. Excess proceeds are distributed first to satisfy governmental liens against the property and then to the former titleholder of the property (less service charges). Seven (7) years after the date of public sale of the tax certificate, unsold lands escheat to the county in which they are located and all tax certificates and liens against the property are canceled and a deed is executed vesting title in the county commissioners.

The Agency does not give any assurance to the holders of the bonds (1) that past experience in a particular county with regard to tax and special assessment delinquencies is applicable in any way to special assessments levied pursuant to financing agreements, (2) that landowners who have executed financing agreements will pay or timely pay the special assessments, (3) that a market may exist in the future for the aforementioned tax certificates in the event of sale of such certificates, and (4) that eventual sale of tax certificates for real property subject to a financing agreement will be for an amount sufficient to pay amounts due under the financing agreement to discharge the lien of special assessments and all other liens that are coequal therewith. However, because of the nature of qualifying improvements (substantial improvements to existing improved properties, likely wide dispersal of participating properties, statutory underwriting guidelines, and required constructive notice), the uniform collection process should be quite attractive to mortgage and credit markets alike.

### **Encouragement by Cities and Counties**

Any general purpose local government (city or county) desiring to make available a PACE funding program to properties within its boundaries can easily attract the focus of the uniform program offered by the Florida PACE Funding Agency by interlocal agreement. Such an interlocal agreement sets forth the details of the professional interlocal coordination and communication involved. The Agency is authorized by general law to levy the assessments directly and enter into the financing agreements with participating property owners. The Agency is non-exclusive in its approach and any city or county may also undertake its own PACE program, or entertain any or all the other PACE programs at any time. The very limited role to obtain the focus of the Agency's Program is for any general purpose local government to adopt a resolution and/or interlocal agreement. Both of which can be prepared and shared with any interested community by contacting the Agency. All the other ministerial actions and activities and documentation (e.g., interface between interested property owners and qualified vendors, determining compliance with all legal requirements for a valid

financing agreement, recording, assessment roll extension) will be independently handled by the Agency as a separate and distinct local government through its third party administrator. Any interested local government may choose to provide additional marketing, public relations, or even seek to buy down or to fund assessments or program aspects within their communities, but is not required to do so.

This approach is designed to allow general purpose local governments (cities and counties) to participate in the advantages of PACE programs locally and access capital markets for private property owners, without having to assemble subject matter expertise, open themselves to liability, and expend significant taxpayer resources to implement or deploy individual programs or individually seek capital for only some of their constituents. It is the Agency that receives applications and works with each voluntary private property owner to levy and impose the assessments, not the city or county.

Although not required by the Agency, such an interlocal agreement confirms or provides for (a) attracting the Agency to act, provide its funding and associated financing services; (b) bringing a well thought out organizational process to each community to work with interested property owners and vendors; (c) the Agency, not the city or county, executes financing agreements which impose and provide for the collection of non-ad valorem assessments pursuant to general law; (d) the issuance of bonds of the Agency (not the city or county) to fund and finance qualifying improvements; (e) the proceeds of such non-ad valorem assessments and collection of the non-ad valorem assessments to be handled by the Agency's Trustee (an independent banking institution with trust powers and duties); (f) allows for termination at any time and reasonably protects the holders of any bonds of the Agency in such event; (g) gives disclosures about the services and activities of the Agency; and (h) provides professional coordination and interlocal communication covenants reasonably necessary and mutually agreed to by the parties to carry out the purpose and mission of the Agency.

Important features of this supplemental interlocal agreement approach are summarized as follows:

- The Agency seeks to establish interlocal communication and coordination with local governments prior to operating within the boundary of a city or county.
- The Agency's program approach is 'open' or 'non-exclusive'. That means any city or county local government can allow or bring in another PACE funding providers, and/or start their own local program at any time. The Agency embraces competition, seeks to be the best program and best cost alternative for the local constituents, and is simply a transparent and accountable alternative designed to serve, spur economic development, jobs, provide expertise in achieving the funding and financing of energy savings and wind resistant improvements for those private property owners who choose to do so.
- The Agency's platform allows for city or county local governments to take a benign approach or actively encourage the scalable and uniform advantages of the Agency's PACE program to secure the focused attention of capital markets, without having to implement or deploy individual programs or individually seek or pay for capital for their constituents.

- A city or county local government can take advantage of the Agency's subject matter expertise and program platform designed for local governments by local governments, giving any city or county local government the opportunity to better leverage any desired contribution by incentivizing alternative PACE program choices and by avoiding the funding of start-up costs.
- The Agency program immediately brings subject matter expertise and leverages the Agency's accumulated skill, innovation, and uniformity to the advantage of all Florida counties or city local governments in a collective fashion.
- The Charter Agreement, Agency Final Judgment, and any interlocal agreements with local governments make it clear that no other local government is responsible for the actions or liabilities incurred by the Agency, thus providing and confirming the insulation of liability pursuant to the Agency's structure and general law to any city or county local government.
- The Agency has strong partners for third-party administration and origination of both residential and commercial PACE financing under the AllianceNRG Program and CounterpointeSRE Program brands, respectively.
- CES also has developed an extraordinary "pipeline" approach to engaging and educating local contractors.
- The Florida PACE Funding Agency is funding in numerous communities statewide, and has financing capacity – right now. Its origination and consumer protection platforms are in place. It is headquartered in Florida, and ready to focus on additional communities. Upon adoption of a simple resolution accepting the Agency's presence, and/or authorizing execution of an interlocal agreement, origination outreach and the financing of qualifying projects can begin immediately.

General Law and the Agency's validation expressly considered the use of interlocal agreements. However, the Agency does not seek any more than some documentation of local acceptance, as it is empowered to act statewide, by general law.