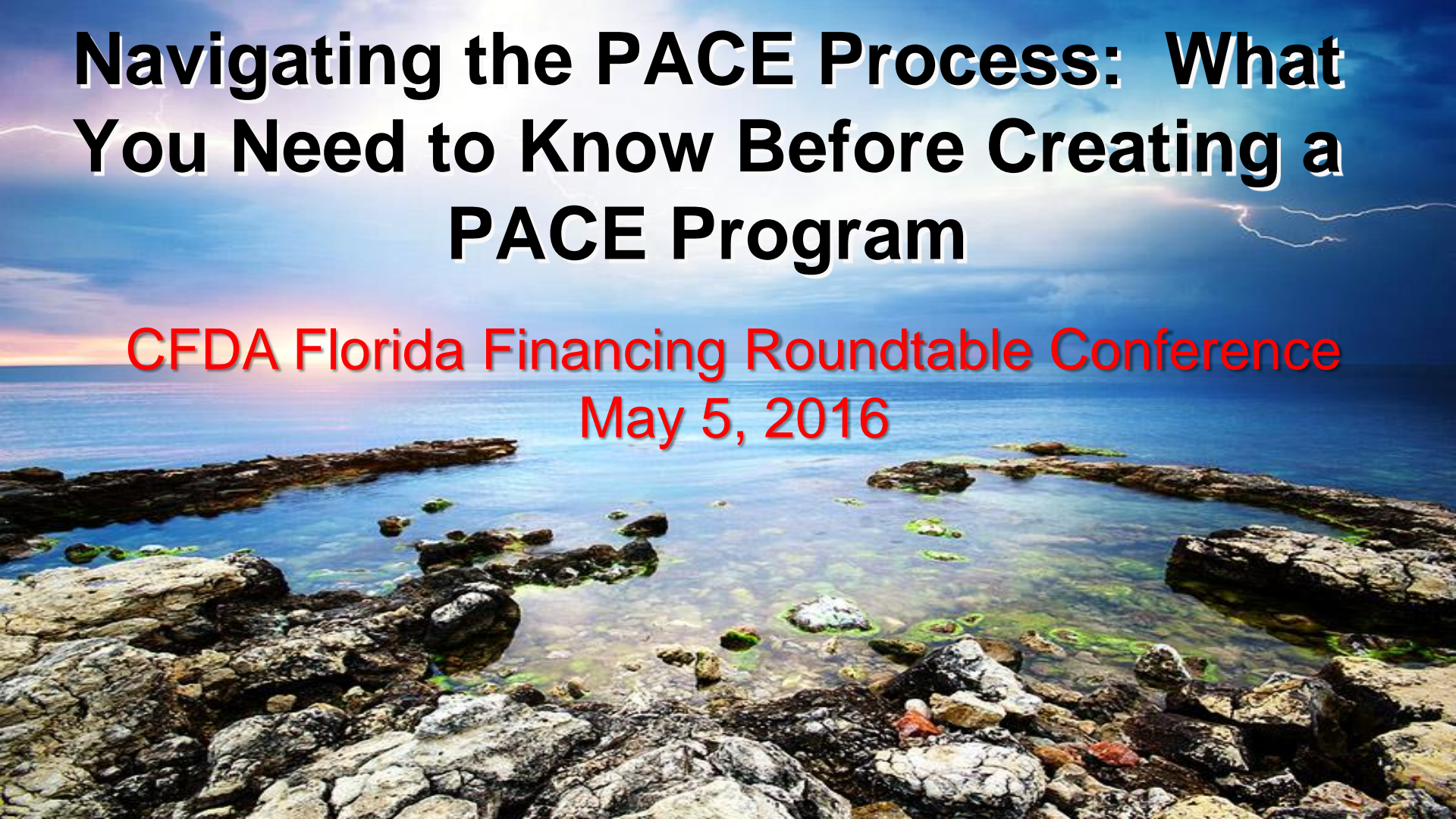


Navigating the PACE Process: What You Need to Know Before Creating a PACE Program

**CFDA Florida Financing Roundtable Conference
May 5, 2016**



Panel Participants

- Moderator:
 - Jennifer LaRocco, Esq.

GRAY | ROBINSON
ATTORNEYS AT LAW

- Panelists:
 - Erin L. Deady, AICP, Esq.
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What are the Key Findings in the Law S. 163.08, F.S?

- “...all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production.”
- “Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property’s burden from potential wind damage.”
- “Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state’s energy and hurricane mitigation policies.”
- “...there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.”

Additional Points?

- Section 163.08, F.S.- Financing is provided to complete **energy efficiency, renewable energy and wind resistance projects**
- Can be a stand alone program or administered through an interlocal agreement among municipal/county governments
- Levy and collection through agreements with property appraisers and tax collectors at County level

Can you discuss some of the important “myths” and “facts” about PACE programs?

<u>Myth</u>	<u>Fact</u>
“Our program is ‘public’ or a government entity & we operate in the sunshine”	Only public entities can assess property owners and PACE programs are formed as a Chapter 189, F.S. district or Interlocal entity (163.01, F.S.). Public entities are subject to sunshine laws by definition. There is no “state” program in Florida.
“One funding source is better than multiple ones”	Using multiple financing sources is becoming the dominant model
“Having one program is better than multiple programs”	Over 300 cities and counties in the U.S. have passed resolutions approving PACE. 95% of these cities and counties allow for multiple programs (“Open PACE Marketplace”).
“Our costs are less”	Verify recording fees, audits, PA and TC, are all accounted for (also read the fine lines for legal, closing and recovery fees).
“Isn’t this mired in litigation”?	No, there has been no legal proceeding “striking down” PACE at the Federal or State level.

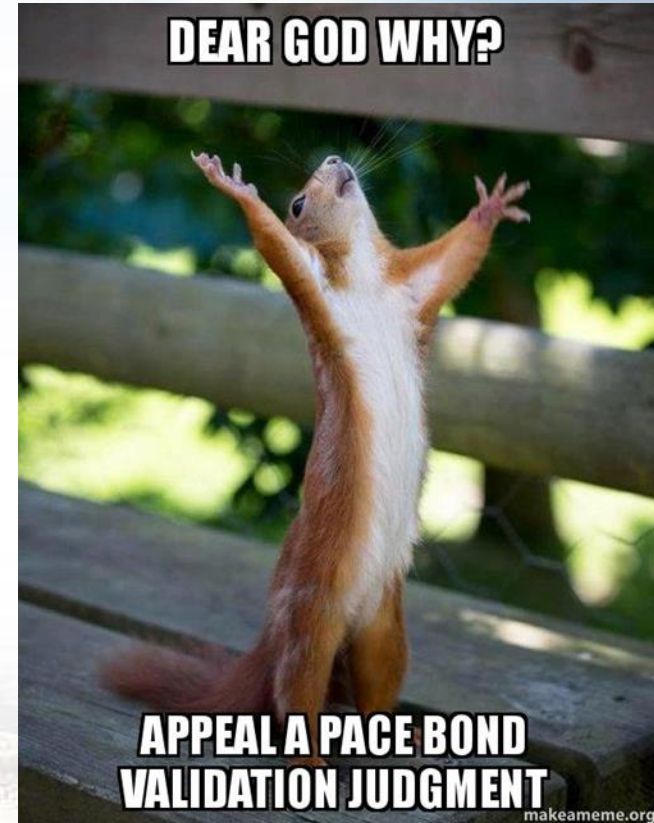
What About the Early Federal Litigation?

- Federal Housing Finance Agency/Fannie Freddie “directives” same month PACE statute signed into law (July 2010)
- Leon County v. FHFA, Fannie, Freddie (1 of 8 plaintiffs including not for profits and governments in CA and NY)
- Chilling effect on programs
- Still causing some residential v. commercial program decisions
- Still causing some confusion with local governments
- Under Housing and Economic Recovery Act (“HERA”) of 2008, FHFA’s actions were not reviewable and it acted within the scope of its authority.
- Ultimately, the Courts found for the Defendants in all cases.



What is the Status of the Bond Validation Litigation?

- As residential programs have been expanding, PACE programs have been undergoing bond validations
- Over the last 2 years, 4 programs or expansions, secured bond validation judgments (allowing programs to fund PACE through bonds)
- **TEST:** 1) Authority to issue the bonds, 2) Purpose of the bonds legal and 3) Bond issuance comply with the requirements of law?
- All judgments were appealed resulting in 5 cases before the Florida Supreme Court
 - 4 were “aggrieved taxpayers”
 - 1 was the Florida Banker’s Association



What Were the Results?

- The issues appealed were procedural not substantive questioning the statute (except Bankers)
- “Aggrieved taxpayers” were not paying the legal bills & 4 cases were about trying to suppress other programs from growing
- All cases were argued in front of FL Supreme Court in March 2015 and May 2015
- One case dismissed in March 2015(Gowen)-no SC opinion on rationale
- Overview of issues raised
- All bonds were upheld



- Supreme Court Case No. SC14-710, *Reynolds v. Leon County Energy Improvement District, etc., et al.* (**Leon County**)
- Supreme Court Case No. SC14-1282, *Thomas, et al. v. State of Florida, etc.* (**Clean Energy Coastal Corridor-Ygrene**)
- Supreme Court Case No. SC14-1618, *Reynolds v. State of Florida, etc.* (**Florida Development Finance Corporation**)
- Supreme Court Case No. SC14-1603, *Florida Bankers Association v. State of Florida, et al* (**Florida Development Finance Corporation**)
- Supreme Court Case No. SC14-2269, *Gowen v. State of Florida* (**Florida Green Energy Works**)

What are Local Governments Looking for in PACE?

Disclosures

- Fees
- Property Owner Notice

Structure

- Indemnifications
- Insurance
- Termination

S. 163.01(7), F.S. ... any debts, liabilities, or other obligations of the Authority do not constitute debts, liabilities or obligations of the Originating Parties or any subsequent Party to this Agreement..... (Statute addresses liability through Interlocal Agreements)

Protections

For the Owners

- Grievances
- Protected classes
- Transparency

For the Government

- Cost/responsibility
- Constitutional officers
- Level of involvement

What are some of the Key Considerations for Government?

- PACE programs in Florida may not operate within a local government's jurisdiction without their consent
- Create a new program or join an existing program
- Single program within the jurisdiction, or multiple programs
- Consider how the program or programs will be selected (formal solicitation of providers or authorizing programs to operate within jurisdiction allowing competition in the open market and availability)



FLORIDA
ASSOCIATION OF
COUNTIES



Can you Describe the Key Structural Elements of the Various PACE programs?

1. A statewide entity formed through interlocal agreement pursuant to Section 163.01, F.S.
 - » *Can include voting or non-voting members.*
 - » *Can be based on geographic range for Board representation and rotational Board seats.*
2. Statewide entity formed similar to an interlocal agreement pursuant to Section 163.01, F.S.
 - » *New members “subscribe” to the entity allowing a three (3) member board to run the program and levy and collect the assessments.*
3. Multiple program operators with separate Section 163.01, F.S. agreements.
 - » *Standard interlocal agreement with each participating member.*
4. Single jurisdictional programs:
 - » *St. Lucie (managed by third party administrator)*
 - » *Leon (managed by third party administrator)*

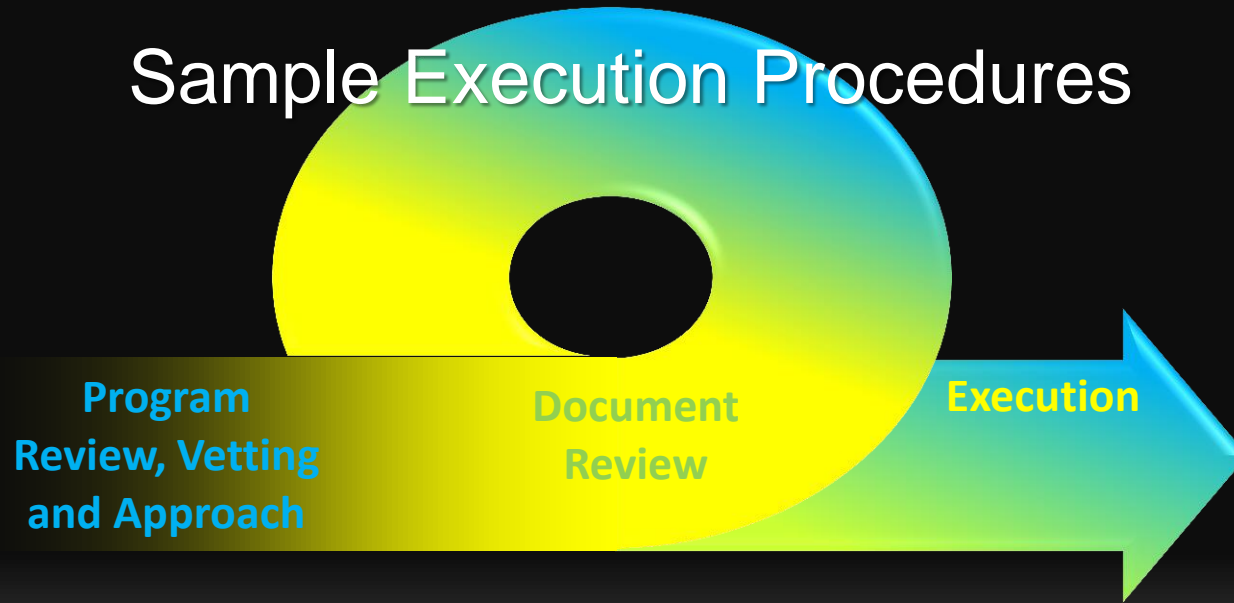


RenewPACE



The Execution Process

Sample Execution Procedures



**Program
Review, Vetting
and Approach**

**Document
Review**

Execution

Program Approach

- Information collecting on programs
- Program status, protections, structural elements
- Multi-provider, standalone, which programs?

Document Review

- Interlocal Agreement
- Program elements
- Resolution
- Adoption of Ordinance?

Finalizing Approval

- Execute Interlocal Agreements
- Tax Collector and Property Appraiser
- Web, etc.

Can you describe the levy and collection process as well as the key documents executed?

- Property Appraisers and Tax Collectors
- These agreements may take different forms
- In Palm Beach County there are separate agreements between the PACE entities and the Property Appraiser and Tax Collector (meaning 2 agreements)
- For the Green Corridor, there is one tri-party Agreement between that PACE entity and the Miami-Dade Property Appraiser and Tax Collector
- No “model” agreement because the different property appraiser and tax collectors are arriving at individual workable agreements





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