



FTA-PP-07: PACE PROGRAM ACCOUNTABILITY

COMMITTEE RECOMMENDATION: DEFER TO LEGISLATIVE CONFERENCE

PROPOSED POLICY: FAC **SUPPORTS** legislation that addresses problems and abuses within the state of Florida’s Property Assessed Clean Energy (PACE) program specifically, but not limited to requiring the PACE program to include greater consumer protections and awareness, and/or requiring financing be based on the ability to pay, reviewing and requiring program adjustments to prevent contractors from unjustly marking up prices of services and penalties for paying off loans early. Also, requiring the Florida Attorney General’s Office to begin reviewing and investigating PACE program contractor issues for potential fraud and abuse.

BACKGROUND: Charlotte County is seeking FAC’s support for a bill that addresses problems and abuses within the state of Florida’s PACE program.

“PACE was approved in 2010 by the state legislature. It lets people finance one hundred percent of the cost for energy saving renovations and pay for it later in their tax bill.”¹ Since the programs beginning there have been clear loopholes and issues within its operations that have allowed for complete fraud and abuse of people desperate for assistance.

ANALYSIS:

- Charlotte County is concerned that our county residents are not being treated appropriately and fairly by a program designed to advance their needs.

FISCAL IMPACT: The requested changes to the PACE program and the fiscal impact on the state is unknown at the moment.

FAC STAFF NOTES:

- FAC 2022 Policy Conference
 - The Committee recommended to defer FTA-PP-07 for further discussion at Legislative Conference
 - Previously FTA-PP-10
- Statutes:
 - In [s. 163.08](#), F.S. - *Supplemental Authority for Improvements to Real Property*, the Legislature declares a “compelling state interest” in enabling property owners to voluntarily finance improved energy consumption and wind resistance related projects to their home. The Legislature further authorizes local governments to finance qualifying home improvements through financing agreements and the related imposition of voluntary assessments. This provides the framework for local governments to administer Property Assessed Clean Energy (PACE) programs at their discretion:

¹ <https://www.fox4now.com/news/local-news/pace-program-causes-issues-for-charlotte-county-homeowners>

- A PACE program provides up-front financing for qualifying energy consumption/wind resistance home improvement projects.
 - Administration of the program can be conducted directly by local governments, indirectly through private entities, or any combination thereof, at the discretion of local governments. Meanwhile the billing is ultimately conducted in the form of non-ad valorem assessments on the property owner's property tax bill.
 - The assessments carry fixed interest rates and are generally repaid over the useful life of the home improvements.
 - The eligibility criteria for many PACE loans focuses on the borrower's level of home equity and payment history. This leads PACE lenders to prioritize long-time homeowners and, accordingly, older homeowners, many of whom may live on a fixed income.
 - A priority lien is placed on the property, and the balance remains with the property even in the event that the original owner/borrower sells the property
 - Due to the priority lien, the PACE lender may have the right to foreclose on the subject property, potentially taking the borrower's house away
 - The priority status of the lien has been a source of conflict with traditional home financing instruments—banks and mortgage lenders are reluctant to approve a loan while the PACE lien supersedes their place as first lien holder. Meanwhile, Fannie Mae and Freddie Mac have expressly refused to back mortgages with remaining PACE assessments, unless first-lien status is given to the mortgage loan.
 - Before entering into a PACE financing agreement, a local government shall reasonably determine that the prospective borrower meets the following criteria:
 - No delinquent property taxes/assessments levied on the property tax bill for the prior three years
 - No existing involuntary liens, including, but not limited to, construction liens
 - No notices of default or other property-based debt delinquency for the prior three years
 - Is current on all mortgage debt on the property
 - Issues relating to consumer welfare have surrounded PACE programs since their inception:
 - Reports of indiscriminate lending practices, regardless of a borrower's capacity to repay the loan
 - Inadequate disclosures regarding the assessment procedure
- Bills:
 - HB 101 – *Improvements to Real Property* (2022) by Rep. Fine (Failed):
 - Would amend [s. 163.08](#), F.S. to include the following consumer protections relating to the PACE program:



- Requiring more rigorous determination that a property owner is able to pay the assessment
 - Allowing property owners to cancel the financial agreement within three days of execution
 - Ensuring that the length of the assessment repayments not exceed the life of the qualifying improvements
 - Requiring that the property owner be presented with a comprehensive disclosure of the agreement's key terms, that must be individually acknowledged before final execution of the agreement
 - Requiring proper licensure and background screening of all contractors affiliated with PACE programs
 - Requiring verification by the local government that the improvements meet local building codes, before disbursement of funds
 - Imposing certain marketing and communication standards on PACE lenders and affiliates, including certain restrictions on solicitation and other inducements
- U.S. Department of Energy Guidance:
 - The U.S. Department of Energy released Best Practice Guidelines for Residential PACE Financing Programs. The guidelines include provisions on:
 - More rigorous financial eligibility criteria and review of homeowner income, property-based debt, and other related obligations
 - Establishing stronger consumer and lender protections
 - Developing and requiring more effective disclosures and procedural education for prospective borrowers
 - A right to cancel the purchase of PACE-related improvements
 - Non-acceleration in the event that a property owner defaults on a PACE assessment
 - Identifying and addressing the vulnerabilities of low-income, fixed-income, and elderly homeowners
 - The full guidelines can be found [here](#).

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ASSIGNED COMMITTEE: FTA

BOARD SUPPORT:

UNFUNDED MANDATE: No

PROTECTIVE OF HOME RULE: POTENTIALLY NO