



# AGENDA ITEM MEMORADUM

Item No. 5C

**Town Attorney**

**Susan L. Trevarthen**

Department

Department Director

COMMISSION MEETING DATE - 7:00 PM	Deadline to Town Clerk
<input type="checkbox"/> Feb 28, 2012	Feb 17
<input type="checkbox"/> Mar 13, 2012	Mar 2
<input type="checkbox"/> Mar 27, 2012	Mar 16
<input checked="" type="checkbox"/> April 10, 2012 *	Mar 30
<input type="checkbox"/> April 24, 2012	Apr 13

**\*Subject to Change**

- Presentation   
 Reports   
 Consent   
 Ordinance  
 Resolution   
 Quasi-Judicial   
 Old Business   
 New Business

**FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC**

**SUBJECT TITLE: Presentation on PACE Program**

**EXPLANATION:** As requested, we will provide a brief presentation explaining the new PACE (Property Assessed Clean Energy) program for local governments and their property owners, based on our experience with getting the legislation passed and developing one of the first PACE districts for the South Dade Green Corridor. The program was authorized by the Florida Legislature in 2010. It allows local governments to provide access to the upfront financing for property owners who would like to make improvements to their properties to make them more energy efficient, provide for renewable energy, and harden them against wind impacts.

A PACE program is completely voluntary. If a city creates one, the property improvements are paid for by a special assessment levied on the property. The establishment of these programs can not only help reduce the Town's carbon footprint and make it more resistant to future windstorms, but can also create needed local jobs. In addition, if the Town partners with our sister cities to create a PACE program, the program can be established with little or no risk to the cities involved.

**EXPECTED OUTCOME: Provision of Information**

- EXHIBIT(S):**
1. One Page Primer from PACENow
  2. Florida Statutes Section 163.08 and 2012 revision
  3. Resolution Approved By Broward League of Cities Board of Directors on PACE

Reviewed by Town Attorney  
 Yes     No

Town Manager Initials CS

# Property Assessed Clean Energy

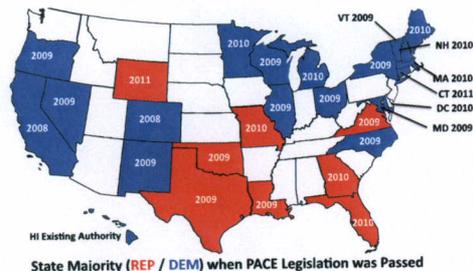
## Innovation for Financing Energy Efficiency

**PACE** is **Property Assessed Clean Energy**, a bipartisan, local government initiative that allows property owners to finance energy efficiency and renewable energy projects for their homes and commercial buildings, simply and with no government subsidies.

**PACE** is **Voluntary**. Interested owners opt-in to receive financing that is repaid through an assessment on their property taxes for up to 20 years. This spreads the cost of energy improvements – weather-sealing, better insulation, more efficient heating and cooling systems, solar installations, etc. – over the expected life of the improvements and allows the repayment obligation to transfer automatically to the next property owner if the building is sold (along with the benefits of the improvements).

### Why PACE?

PACE solves two key barriers that hinder adoption of energy efficiency and small-scale renewable energy. Long-term financing eliminates the upfront cost barrier and assessments that transfer to a new owner upon sale ensure that current and future owners pay fairly for improvements that remain with the property. Unlike state or utility sponsored programs that seem distant and bureaucratic, PACE programs provide a way for local communities to sponsor programs that meet their individual needs.



### How PACE Works

PACE uses the same kind of land-secured financing districts that American cities and towns have relied on for over 100 years to pay for improvements in the public interest. Over 37,000 land secured districts already exist and are a safe and familiar tool of municipal finance for street paving, parks, open space, water and sewer systems, street lighting, and seismic strengthening, among others.

**PACENow** is an independent advocacy group for property assessed clean energy, a private capital market solution to financing energy efficiency and renewable energy projects that does not require government subsidies or taxes.

Contact PACENow's Executive Director, David Gabrielson, at:  
[david.pacenow@gmail.com](mailto:david.pacenow@gmail.com)      <http://www.pacenow.org>

### PACE is Unique

- **Creates permanent jobs** - nationwide and across a range of skills.
- **Uses private capital for funding** – requires NO taxes or government subsidies.
- **Voluntary** – only opt-in participants receive benefits and agree to pay assessments.
- **Promotes energy security** - without federal regulation or taxes that drive up energy costs.
- **Saves money and increases value** – efficiency and renewable projects make buildings more valuable.
- **No upfront cost** - PACE financing spreads costs over the life of improvements.
- **Assessment can transfer on sale** - new owner benefits from improvements that stay with the property.
- **Avoids costly power plants** – difficult to site.
- **Improves air quality** – makes communities healthier.

### What They're Saying?

"PACE is a no-cost to taxpayers, no-mandate, consumer opt-in approach that brings clean energy technology to homeowners and businesses. PACE will help create jobs for Floridians at a critical time when we are working to get Florida's economy back on track." **Adam Hasner (R-FL)** former Majority Leader, FL House of Representatives

"PACE is already creating economic opportunity, energy savings, and environmental benefits through the retrofit of residential and commercial building stock." **Gov Bill Ritter (D-CO)**

"A New York City PACE program providing property owners with the upfront capital to make energy efficiency retrofits will create jobs and reduce energy costs for residents and businesses." **Mayor Michael Bloomberg (I-NYC)**

"I am honored to be one of our nation's first Mayors to support PACE. San Diego plans to derive strong long term advantages through PACE programs and we urge the rest of our nation, on a bipartisan basis, to join us." **Mayor Jerry Sanders (R-San Diego)**

"With PACE, we are providing homeowners and business owners with powerful tools to take control of their energy use and create jobs at the same time" **Gov Arnold Schwarzenegger (R-CA)**

**PACENOW**

RESOLUTION NO. 2012-B-39

**A RESOLUTION OF THE BROWARD COUNTY LEAGUE OF CITIES ENCOURAGING ITS MEMBERS TO PARTNER TOGETHER AND CREATE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in 2010, the Florida Legislature adopted HB 7179 (Section 163.08, F.S.)(the "Bill"), which allows local governments to create Property Assessed Clean Energy (PACE) programs in order to provide the upfront financing for energy conservation and efficiency (i.e. energy-efficient heating, cooling, or ventilation systems), renewable energy (i.e. solar panels), and wind resistance (i.e. impact resistant windows) improvements (the "Qualifying Improvements"); and

**WHEREAS**, PACE programs not only assist residents and business owners in reducing their carbon footprint and energy costs, but also stimulate the local economy by the creation of needed construction jobs; and

**WHEREAS**, the Bill authorizes local governments that create PACE programs to enter into a partnership in order to provide more affordable financing for the installation of the Qualifying Improvements; and

**WHEREAS**, given the wide spread energy and economic benefits of PACE programs, the Broward County League of Cities encourages its members to partner together to create such programs.

**NOW, THEREFORE, BE IT RESOLVED BY THE BROWARD COUNTY LEAGUE OF CITIES:**

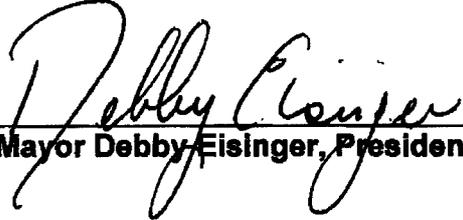
~~**SECTION 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.~~

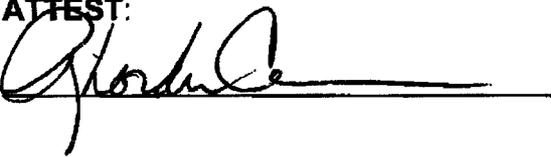
**SECTION 2.** The Broward County League of Cities encourages its members to adopt a resolution or ordinance creating a PACE program to provide for the upfront financing for the installation of Qualifying Improvements. The League further encourages its members to partner together, pursuant to Sections 163.01 and 163.08 F.S., to allow for the installation of Qualifying Improvements to be more affordable and to assist property owners who wish to undertake such improvements.

**SECTION 3.** The League's Executive Director is hereby directed to transmit a copy of this Resolution to our member cities.

**SECTION 4.** This Resolution shall become effective upon its passage and adoption.

**PASSED AND ADOPTED BY THE BROWARD COUNTY LEAGUE OF CITIES**  
this 1<sup>st</sup> day of March, 2012.

  
\_\_\_\_\_  
Mayor Debby Eisinger, President

**ATTEST:**  
  
\_\_\_\_\_

**The 2011 Florida Statutes**

**Title XI COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS**

**Chapter 163 INTERGOVERNMENTAL PROGRAMS**

**163.08 Supplemental authority for improvements to real property.—**

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that 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 energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. 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. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(c) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

(2) As used in this section, the term:

(a) "Local government" means a county, a municipality, or a dependent special district as defined in s. 189.403.

(b) "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:

- a. Improving the strength of the roof deck attachment;
- b. Creating a secondary water barrier to prevent water intrusion;
- c. Installing wind-resistant shingles;
- d. Installing gable-end bracing;
- e. Reinforcing roof-to-wall connections;
- f. Installing storm shutters; or
- g. Installing opening protections.

(3) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(5) Pursuant to this section or as otherwise provided by law or pursuant to a local government's home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

(7) A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.

(8) A local government may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.

(9) Before entering into a financing agreement, the local government shall reasonably determine that all property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less; that there are no involuntary liens, including, but not limited to, construction liens on the property; that no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less; and that the property owner is current on all mortgage debt on the property.

(10) A qualifying improvement shall be affixed to a building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture attached to the building or facility. An agreement between a local government and a qualifying property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(11) Any work requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly certified or registered pursuant to part I or part II of chapter 489.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the just value of the property as determined by the county property appraiser.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to

the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(14) At or before the time a purchaser executes a contract for the sale and purchase of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

**QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—**The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(15) A provision in any agreement between a local government and a public or private power or energy provider or other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(16) This section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.

History.—s. 1, ch. 2010-139.

ENROLLED

CS/CS/HB 7117, Engrossed 3

2012 Legislature

1  
 2 An act relating to energy; amending s. 163.08, F.S.;  
 3 revising the definition of the term "local  
 4 government"; amending s. 186.801, F.S.; adding factors  
 5 for the Public Service Commission to consider in  
 6 reviewing the 10-year site plans submitted to the  
 7 commission by electric utilities; amending s. 212.055,  
 8 F.S.; providing for a portion of the proceeds of the  
 9 local government infrastructure surtax to be used for  
 10 financial assistance to residential and commercial  
 11 property owners who make energy efficiency  
 12 improvements or install renewable energy devices;  
 13 defining the term "energy efficiency improvement";  
 14 amending s. 212.08, F.S.; providing definitions for  
 15 the terms "biodiesel," "ethanol," and "renewable  
 16 fuel"; providing for tax exemptions in the form of a  
 17 rebate for the sale or use of certain equipment,  
 18 machinery, and other materials for renewable energy  
 19 technologies; providing eligibility requirements and  
 20 tax credit limits; authorizing the Department of  
 21 Revenue and the Department of Agriculture and Consumer  
 22 Services to adopt rules; directing the Department of  
 23 Agriculture and Consumer Services to determine and  
 24 publish certain information relating to exemptions;  
 25 providing for expiration of the exemption; amending s.  
 26 213.053, F.S.; expanding the authority of the  
 27 Department of Revenue to disclose certain information;  
 28 amending s. 220.192, F.S.; providing definitions;

ENROLLED

CS/CS/HB 7117, Engrossed 3

2012 Legislature

29 reestablishing a corporate tax credit for certain  
 30 costs related to renewable energy technologies;  
 31 providing eligibility requirements and credit limits;  
 32 providing for use of authorized but unallocated credit  
 33 amounts; providing rulemaking authority to the  
 34 Department of Revenue and the Department of  
 35 Agriculture and Consumer Services; directing the  
 36 Department of Agriculture and Consumer Services to  
 37 determine and publish certain information; providing  
 38 for expiration of the tax credit; amending s. 220.193,  
 39 F.S.; reestablishing a corporate tax credit for  
 40 renewable energy production; providing definitions;  
 41 providing a tax credit for the production and sale of  
 42 renewable energy; providing requirements relating to  
 43 the priority and proration of such tax credits under  
 44 certain circumstances; providing for the use and  
 45 transfer of the tax credit; limiting the amount of tax  
 46 credits that may be granted to an individual taxpayer  
 47 per state fiscal year and for all taxpayers per state  
 48 fiscal year; increasing the cap for all taxpayers  
 49 during a specified period; providing for use of  
 50 authorized but unallocated credit amounts; providing  
 51 rulemaking authority to the Department of Revenue and  
 52 the Department of Agriculture and Consumer Services;  
 53 directing the Department of Agriculture and Consumer  
 54 Services to provide certain information on its  
 55 website; providing for expiration of the tax credit;  
 56 amending s. 255.257, F.S.; directing the Department of

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2012 Legislature

57 Management Services, in coordination with the  
 58 Department of Agriculture and Consumer Services, to  
 59 further develop the state energy management plan;  
 60 amending s. 288.106, F.S.; redefining the term "target  
 61 industry business," for purposes of a tax refund  
 62 program, to exclude certain electrical utilities;  
 63 amending s. 366.92, F.S.; deleting an obsolete  
 64 directive to the Public Service Commission to adopt  
 65 rules for a renewable portfolio standard; deleting  
 66 related definitions; removing a provision that allowed  
 67 full cost recovery for certain renewable energy  
 68 projects; creating s. 366.94, F.S.; providing that the  
 69 provision of electric vehicle charging to the public  
 70 by a nonutility is not the retail sale of electricity;  
 71 providing that the rates, terms, and conditions of  
 72 electric vehicle charging services by a nonutility are  
 73 not subject to regulation under ch. 366, F.S.;

74 requiring the Department of Agriculture and Consumer  
 75 Services to develop rules for sales at electric  
 76 vehicle charging stations; prohibiting the obstruction  
 77 of a parking space at an electric vehicle charging  
 78 station; providing a penalty; requiring that the  
 79 Public Service Commission study the effects of  
 80 charging stations on energy consumption in the state  
 81 and the effects on the grid and report the results to  
 82 the President of the Senate, the Speaker of the House  
 83 of Representatives, and the Executive Office of the  
 84 Governor; amending s. 377.703, F.S.; requiring the

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CS/CS/HB 7117, Engrossed 3

2012 Legislature

85 Department of Agriculture and Consumer Services to  
 86 annually prepare an assessment of the use of specified  
 87 energy-related tax credits; requiring specified  
 88 information to be included in such assessment;  
 89 amending s. 526.203, F.S.; revising the definitions of  
 90 the terms "blended gasoline" and "unblended gasoline";  
 91 defining the term "alternative fuel"; directing the  
 92 Department of Agriculture and Consumer Services to  
 93 compile a list of retail fuel stations that sell or  
 94 offer to sell unblended gasoline and provide that  
 95 information on the department's website; amending s.  
 96 581.083, F.S.; prohibiting the cultivation of certain  
 97 algae in plantings greater in size than 2 contiguous  
 98 acres; providing exceptions; providing for exemption  
 99 from special permitting requirements by rule; revising  
 100 certain bonding requirements; requiring the Department  
 101 of Agriculture and Consumer Services to conduct a  
 102 statewide forest inventory; requiring the Department  
 103 of Agriculture and Consumer Services to work with  
 104 other specified entities to develop information on  
 105 cost savings for energy efficiency and conservation  
 106 measures and post it on the department's website;  
 107 providing an appropriation from the Florida Public  
 108 Service Regulatory Trust Fund for the purpose of the  
 109 Public Service Commission, in consultation with the  
 110 Department of Agriculture and Consumer Services, to  
 111 contract for an independent evaluation of the Florida  
 112 Energy Efficiency and Conservation Act; requiring

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CS/CS/HB 7117, Engrossed 3

2012 Legislature

113 reports to the Legislature and the Executive Office of  
 114 the Governor; providing an effective date.

115  
 116 Be It Enacted by the Legislature of the State of Florida:

117  
 118 Section 1. Paragraph (a) of subsection (2) of section  
 119 163.08, Florida Statutes, is amended to read:

120 163.08 Supplemental authority for improvements to real  
 121 property.—

122 (2) As used in this section, the term:

123 (a) "Local government" means a county, a municipality, ~~or~~  
 124 a dependent special district as defined in s. 189.403, or a  
 125 separate legal entity created pursuant to s. 163.01(7).

126 Section 2. Subsection (2) of section 186.801, Florida  
 127 Statutes, is amended to read:

128 186.801 Ten-year site plans.—

129 (2) Within 9 months after the receipt of the proposed  
 130 plan, the commission shall make a preliminary study of such plan  
 131 and classify it as "suitable" or "unsuitable." The commission  
 132 may suggest alternatives to the plan. All findings of the  
 133 commission shall be made available to the Department of  
 134 Environmental Protection for its consideration at any subsequent  
 135 electrical power plant site certification proceedings. It is  
 136 recognized that 10-year site plans submitted by an electric  
 137 utility are tentative information for planning purposes only and  
 138 may be amended at any time at the discretion of the utility upon  
 139 written notification to the commission. A complete application  
 140 for certification of an electrical power plant site under