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Florida Adopts Legislation to Benefit Construction Industry and Help Property Owners Finance Energy Efficiency and Renewable Energy Improvements

by Paul D'Arelli, Esq.

On May 27, 2010, Governor Charlie Crist signed legislation to allow any local government in Florida to use an innovative financing concept (Property Assessed Clean Energy or "PACE" financing) to help property owners complete energy efficiency retrofits, renewable energy improvements and wind resistance improvements to their private residential, commercial or industrial properties. Known as House Bill 7179, this legislation sets the predicate for any county or municipality in Florida to establish a PACE program that holds promise to stimulate local economies with increased construction activity, construction product sales and uptake of related products and services.

PACE programs generally involve a local government raising capital from public or private financing sources and loaning funds to willing property owners within the program area to finance the installation of distributed generation renewable energy sources (e.g., solar photovoltaic systems) and energy efficiency improvements (e.g., insulation, high performance HVAC systems and windows, etc.) that are permanently affixed to their real property. The loan is then typically repaid by the property owner over a long term (e.g., 10-20 years) as

an item on the property owner's ad valorem tax bill. Only willing property owners who voluntarily enter into assessment agreements with the local government will be subject to the payment of assessments.

Pioneered in California, PACE financing offers several benefits to local governments, property owners and the business community which has resulted in over 17 states following California's lead with implementing legislation. These benefits can include:

Property Owner Benefits

- Means to pay for energy efficiency improvements or renewable system with no upfront cost
- Loan for energy efficiency improvements or renewable system with no credit qualification
- Loan for energy efficiency improvements or renewable system not necessarily dependent on amount of equity in the property
- Long term payback
- Loan that runs with the property and does not need to be repaid by the property owner on sale of the property
- Hedge against rising energy

prices

Local Government Benefits

- Means to effectively implement energy conservation/GHG reduction policies
- Stimulus for local economies
- Means of supporting a retrofit or renewable energy program without commitment of general fund dollars

Contractor and Vendor Benefits

- Jobs and sales since customers have access to 100% financing that is not credit dependent

Many local governments in Florida have already begun exploring the establishment of a PACE program as an exciting opportunity to advance their energy conservation and greenhouse gas emissions reduction goals while stimulating their local economies. Similarly, many in the beleaguered construction industry and solar installers are anxious to learn how PACE can benefit their business in this time of economic dislocation.

Launching local PACE programs requires a combination of legal, technical, financial and administrative expertise and there will certainly be a learning curve as the PACE concept takes root in the Sunshine State.

“Qualified Improvements” under HB7179 include:

- ✓ *“Energy conservation and efficiency improvements:”* measures to reduce consumption, through conservation or 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 energy-efficient heating, cooling or ventilation systems
 - building modifications to increase the use of daylight
 - replacement windows
 - installation of energy controls or energy recovery systems
 - installation of electric vehicle charging equipment; and installation of efficient lighting equipment
- ✓ *“Renewable energy improvements:”* the installation of any system whose 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
 - wind energy
- ✓ *“Wind resistance improvements”* includes, but is not limited to:
 - improving the strength of the roof deck attachment
 - creating a secondary water barrier to prevent water intrusion
 - installing wind-resistant shingles
 - installing gable end bracing
 - reinforcing roof-to-wall connections
 - installing storm shutters
 - installing opening protections

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Paul D’Arelli of Berger Singerman’s Fort Lauderdale office took an active role in bringing PACE implementing legislation to Florida, first presenting the topic in May 2009 at the Florida Green Cities Conference in Orlando in a presentation entitled “A New Tool for Financing Energy Efficiency Improvements and Renewable Energy Systems – A Model for Florida?” He was then invited to present the property assessed financing concept to the Florida Association of Counties where it generated significant interest. Paul had active involvement in the legislative effort that culminated in the enactment of HB 7179 and has conferred with numerous local governments interested in the concept. He recently authored a 75-page guide for the University of Florida entitled “Energy Efficiency Retrofit and Renewable Energy Programs Using Property Assessed Financing – Florida Guide for Local Governments” set for release in June.

As the fifth LEED Accredited Professional (LEED®AP) attorney in the United States and first in Florida, Paul was at the forefront of attorneys who recognized the significance of sustainability and green building trends on all aspects of real estate development, operations, and business in general and responded by receiving accreditation through the U.S. Green Building Council and focusing his practice on sustainable development.