

## PACE Programs: Focus on Florida

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There has been a lot of buzz about PACE programs in the Sunshine State, which is hardly surprising given national press coverage of three separate programs, each capable of enlisting any municipality in Florida. Other municipal jurisdictions are considering whether or not to initiate programs of their own. For instance, Leon County (which filed a lawsuit in 2010 in the U.S. District Court for the Northern District of Florida to overturn the FHFA ban on residential PACE) formed the first PACE district in Florida and continues to develop various elements of the Leon Energy Assistance Program ("[LEAP](#)").

Florida passed its PACE enabling statute ([Section 163.08, F.S.](#)) in 2010, thanks to strong bipartisan legislative support and the efforts of many to promote energy efficiency and renewable energy measures for homes and commercial buildings throughout the state. Florida's PACE statute also permits improvements to buildings that make them more resistant to damage from wind (think hurricanes), and some feel that energy savings that result from using less water make PACE suitable for water efficiency measures as well.

Recent amendments to Florida's PACE statute were also adopted, allowing multi-jurisdictional programs to scale more quickly and efficiently. This can make a lot of sense, particularly for smaller communities, because it allows them to share program administration, marketing, and other costs, and access private sector capital more effectively and ultimately at lower interest rates.

Florida law offers local governments mitigation of risk and liability related to the PACE transactions whether by creating an individual program through the formation of a dependent special district (Chapter 189, F.S.) or a multi-jurisdictional program (Section 163.01, F.S.). Each of the three programs summarized below can levy PACE assessments, offer financing and subsequently receive assessment payments collected at the county level. The programs share some attributes, but differ in the way they address residential PACE, financing models, water efficiency measures, and issues related to the notice, and consent or acknowledgment of an existing mortgage lender for commercial projects. PACE stakeholders are following existing mortgage lender reactions to commercial PACE closely, and it will be interesting to see how project lenders, building owners, and local governments decide to handle this issue. While a program may require only that notice of a PACE project be provided to a property's mortgage lender, property owners and PACE funders may determine that some form of acknowledgment or support for the project from an existing lender is necessary to proceed.

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### 1. Clean Energy Green Corridor

[Ygrene Energy Fund's announcement](#) with [Carbon War Room](#) of a program centered in South Florida has led to the formation of [the Clean Energy Green Corridor District](#). Initiated by the Town of Cutler Bay, the District to date includes Miami, South Miami, Pinecrest, Palmetto Bay, and Miami Shores, communities that total about 650,000 people. The Green Corridor District plans to offer both commercial and residential PACE financing, though only commercial projects will be permitted in the City of Miami.

Ygrene Energy Fund Florida, a subsidiary of the California based leader in PACE program development, will administer the program, using its turnkey approach that provides administration, financing, contracting, and a range of assurances and performance guarantees to participating governments. According to Ygrene's John Wakefield, the implementation process has been launched with initial project finance and property improvements expected this fall for likely completion in early 2013. Ygrene reports that it has secured funding through Barclays and is working to develop potential funding from other lenders capable of warehousing assessments.

In Miami-Dade, Ygrene uses a comprehensive marketing strategy that involves broad outreach to local stakeholders

through workshops, newsletters, and presentations. As John Wakefield informs us, in every clean energy district Ygrene establishes an Energy Center to showcase new equipment and technology, offer assistance and resources to local property owners, and undertake contractor recruitment, training and certification. Building on the experience of the Sonoma County Energy Independence program, Ygrene developed its direct advertising efforts consisting of media ads, direct mailing, and community events to better reach local property owners. Overall, Ygrene puts emphasis on creating localized programs at a District level.

As for energy audits, Green Corridor uses home evaluation software tool to prioritize improvements and calculate the SIR (savings to investment ratio).

Water conservation and wind hazard abatement projects could be offered to Green Corridor participating municipalities that choose to include these measures when they join.

Green Corridor will not require consent from existing mortgage lenders, relying on Florida's enabling statute requirements for notice only.

For more information about the program, please contact John Wakefield via e-mail [John.Wakefield@ygrene.us](mailto:John.Wakefield@ygrene.us)

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## **2. Florida Green Energy Works Program**

[Florida Green Energy Works](#) is administered by [EcoCity Partners, L3C](#), a Florida low profit, limited liability corporation. The Towns of Lantana and Mangonia Park, both in Palm Beach County, recently joined to incorporate the Florida Green Finance Authority, the "separate legal entity" which any municipality or local government in Florida can join by interlocal agreement to scale the consortium.

Florida Green Energy Works is focused on commercial PACE. While the program is equipped to offer both residential and commercial financing, at this point, residential funding is not being offered, due to the uncertainty created by the FHFA. EcoCity's Mike Wallander points out that ultimately it will be up to participating local governments to decide whether to participate in residential financing.

The program uses the "owner-arranged/open market" funding model and requires commercial property owners to provide notice and receive consent for the PACE assessment from their existing mortgage lender. When consent is obtained for a project, any market-based financing could be obtained. In other words, property owners can use any lender/ funding source, which open market advocates believe will induce competition and ultimately result in a lower interest rates and closing costs. EcoCity Partners is working with property owners and providers of funding to match the need with supply. The program expects to conclude its bond validation process by the end of the year.

Regarding lender consent, Wallander notes, "We have invested time to meet with the banks to educate them about PACE. We view existing lenders as partners. We understand that it is an educational process and once one bank signs off on a project for one building, we expect others to follow. We do subscribe to the idea of lender consent, though Florida law only requires a notice."

Wind hazard abatement and water efficiency measures are an integral component of the program that will be available for local governments joining Florida Green Energy Works Program. Erin Deady, a lawyer active in developing Florida Green Energy Works and working with Leon County on the FHFA federal litigation, identifies the significant amount of data showing the linkage between water and energy efficiency improvements as justification for using PACE.

Florida Green Energy Works requires an energy savings audit completed by a qualified energy auditor or a certified building energy rater. At a minimum, this audit will include the following information:

1. Recommendations for energy savings measures;
2. Estimated energy savings and a priority ranking for each measure;
3. Estimated renewable energy to be produced;
4. Estimated greenhouse gas reductions; and

5. Estimated cost savings resulting from the implementation of the recommendations and use of funds made available by the District.

A web based platform will collect and make data related to projects' energy savings and environmental impacts (carbon reductions) readily available to the public.

Wallander informs us that the program has launched and [the website](#) is accepting electronic applications in participating municipalities. Contact Mike Wallander via phone 818-527-6511 or email: [Michael@ecocitypartners.com](mailto:Michael@ecocitypartners.com) for more information.

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### **3. Florida PACE Funding Agency**

[The Florida PACE Funding Agency](#) garnered plenty of attention when it received validation for up to \$2 billion in bond financing last fall. Kissimmee, a city in central Florida and Flagler County on the Atlantic coast are the original incorporators for the Agency, to which other local governments will "subscribe" to join. Again, under authority established by Section 163.01, F.S. the Agency will provide services to its subscribers and can levy assessments as repayment for PACE funded projects. [Bryant, Miller & Olive \(BMO\)](#), a prominent Florida based law firm, was instrumental in forming the program, and has been engaged by the Agency as its special counsel and bond counsel. [Energy, Environment & Infrastructure LLC](#) (a subsidiary of Science Applications International Corporation "SAIC") was selected to be the third party administrator. The Agency is still in discussion with several providers of financial services. Bob Reid of BMO believes financing may ultimately be in the form of a warehouse facility that makes project funding available whenever it is needed.

The judgment of the Florida Circuit Court of Leon County on validation is binding on all parties in Florida, and it provides a judicial finality to the question of whether a local government has the authority to impose its PACE assessments. The \$2 billion funding target could be achieved, according to Reid, if just 5% of 20-year-old residential and commercial buildings in the state participate in the program with an average project amounting to \$15,000. Validation of the Florida PACE Funding Agency's program does not extend to the Green Corridor or Florida Green Energy Works programs, which will have to seek validation of their individual programs.

Regarding commercial PACE, the Agency will base its requirements on Florida law that does not require consent from existing mortgage lenders for projects that represent less than 20% of the property's appraised value (Florida law does require consent for projects in excess of 20%). According to Reid, the Florida PACE law passed after substantial engagement with the Florida Bankers Association and individual lenders. Therefore, the Agency will follow the law and provide a 30 day notice to existing lenders to present them with an opportunity to adjust/impose monthly tax /insurance /escrow payments.

The agency will not require energy audits, however, interested property owners can get energy audits through qualified auditors.

For more information, please contact Bob Reid with Bryant, Miller & Olive via email [breid@bmolaw.com](mailto:breid@bmolaw.com).

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#### **About PACENow**

[PACENow](#) is a non-profit organization that provides impartial leadership for a broad coalition of governments, elected representatives, national municipal associations, trade organizations, businesses and business councils, environmental groups, and private individuals who support the PACE movement.

PACENow's mission is to promote the use of Property Assessed Clean Energy finance as a powerful tool to drive energy retrofits of our nation's homes and commercial buildings.