



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.26.

11/14/2023

Subject:

Resolution objecting to Florida PACE Funding Agency's proposed levy of non-ad valorem assessments in Brevard County

Fiscal Impact:

None.

Dept/Office:

County Attorney's Office

Requested Action:

It is requested that the Board of County Commissioners approve the proposed resolution objecting to Florida PACE Funding Agency's levy on non-ad valorem assessments in Brevard County.

Summary Explanation and Background:

The County entered into an interlocal agreement with Florida PACE Funding Agency ("FPFA") on March 20, 2018. The interlocal agreement allowed FPFA to operate a "property assessed clean energy" ("PACE") funding program in Brevard County pursuant to section 163.08, Florida Statutes. The subscription agreement also allowed FPFA to levy non-ad valorem assessments against properties improved by these funds within unincorporated Brevard County.

Subsequently, the Board terminated the interlocal agreement with FPFA as to residential and non-profit properties, thus ending FPFA's authorization to levy non-ad valorem assessments against those properties in Brevard County. FPFA nonetheless continues to operate a PACE program and levy non-ad valorem assessments in Brevard County. FPFA contends that it is authorized to do so pursuant to a bond validation judgment issued in Leon County. On September 19, 2023, the Board authorized the County Attorney to join the County in an action contesting FPFA's authority to levy non-ad valorem assessments within Brevard County. That action remains pending.

In an attempt to otherwise legitimize its PACE activities throughout the state, FPFA published notice of a public hearing to be held on November 21, 2023, in Kissimmee, in which FPFA plans to approve a resolution purporting to allow FPFA to levy non-ad valorem assessments in every Florida county. It is requested that the Board of County Commissioners adopt the attached resolution objecting to FPFA's continued efforts to operate in Brevard County without authority and in violation of the County's home rule.

Clerk to the Board Instructions:

Return a signed resolution to the County Attorney's Office.



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November 15, 2023

M E M O R A N D U M

TO: Morris Richardson, County Attorney

RE: Item F.26., Resolution Objecting to Florida PACE Funding Agency's Proposed Levy of Non-Ad Valorem Assessments in Brevard County

The Board of County Commissioners, in regular session on November 14, 2023, adopted Resolution No. 23-139, objecting to Florida PACE Funding Agency's levy on non-ad valorem assessments in Brevard County. Enclosed is the fully-executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

for: Donna Scott
Kimberly Powell, Clerk to the Board

Encl. (1)

RESOLUTION NO. 2023- 139

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA OBJECTING TO THE FLORIDA PACE
FUNDING AGENCY'S PROPOSED USE OF THE UNIFORM METHOD
OF COLLECTING NON AD-VALOREM ASSESSMENTS WITHIN
BREVARD COUNTY AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners of Brevard County, Florida (the "Board"), on or about March 20, 2018, entered into an interlocal agreement termed a "subscription agreement" with Florida PACE Funding Agency (the "FPFA"), authorizing FPFA to provide PACE funding for property owners in Brevard County, and authorizing FPFA to levy non-ad valorem assessments against properties receiving this funding pursuant to section 163.08, Florida Statutes; and

WHEREAS, this interlocal agreement between the Board of County Commissioners of Brevard County and Florida PACE Funding Agency has since terminated; and

WHEREAS, as a result of the interlocal agreement's termination, the Board no longer authorizes Florida PACE Funding Agency to levy non-ad valorem assessments against properties located in unincorporated Brevard County; and

WHEREAS, Florida PACE Funding Agency has published notice of its intent to use the uniform method of collecting non-ad valorem assessments within the area encompassed by the boundaries of every county in Florida, including Brevard County, by adopting a resolution at a public hearing on November 21, 2023, in Kissimmee, Florida; and

WHEREAS, Florida PACE Funding Agency's notice indicates that it will accept written comments or objections to its proposed resolution; and

WHEREAS, Florida PACE Funding Agency's proposed resolution purports to subject the entire state of Florida to the uniform method of collection, notwithstanding the fact that certain counties, including Brevard County, have no agreement with Florida PACE Funding Agency authorizing such activity; and

WHEREAS, this proposed action has no basis in Florida law, and more particularly, it also violates Brevard County's home rule powers and authority to adopt resolutions and to engage in, or terminate contractual relationships, in order to provide for the welfare of its citizens.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

Section 1. The Board of County Commissioners of Brevard County objects to the proposed resolution which Florida PACE Funding Agency is considering adopting on November 21, 2023, which purports to use the uniform method of collecting non-ad valorem assessments within the entirety of the State of Florida. Florida PACE Funding Agency has no authority to take such action under Florida law, and, in particular, it has no authority to collect non ad-valorem assessments from Brevard County residents without being authorized to do so by entering into an interlocal agreement with the Board of County Commissioners of Brevard County. This proposed action by Florida PACE Funding Agency ignores specific language in section 163.08, (16) Florida Statutes, which states, "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." This proposed action ignores Brevard County's right as a charter county to exercise its home rule power by adopting resolutions, to either enter into contractual relationships or terminate contractual relationships, to provide for the welfare of County residents.

Section 2. This resolution shall take effect immediately upon adoption.

This Resolution passed and adopted this 14th day of November, 2023.

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA**

By: 

Rita Pritchett, Chair

(SEAL)

Attest:

By: 

Rachel M. Sadoff, Clerk of the Court

As approved by the Board on 11/14/2023.