# Akerman Practice Update

**ENERGY AND UTILITIES**

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## Energy Finance Districts to Accelerate Retrofits and Green Job Growth

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**Jeffrey Lynne**
jeffrey.lynne@akerman.com

On February 3, 2010, Energy & Utilities Policy Committee Chairman Steve Precourt (R-Orlando) and House Majority Leader Adam Hasner (R-Delray Beach) announced that they are exploring the adoption of legislation which was named by the Harvard Business Review as one of the "Breakthrough Ideas for 2010." "PACE" or "Property Assessed Clean Energy", is a concept utilizing local government bonding capacity to lend funds to commercial and residential property owners to finance energy retrofits (efficiency measures and small renewable energy systems) who then repay their loans over 20 years via an annual assessment on their property tax bill.

Popularly referred to as "Energy Finance Districts" or "Clean Energy Assessment Districts", these municipal taxing districts have gained national attention for the advantages they provide over more traditional loans for financing energy efficiency retrofits to the extent the costs are tied to the property, not the original investor, thereby overcoming some of the most intractable market barriers to energy efficiency such as the landlord-tenant problem.

"PACE is a no-subsidy, no-mandate, no-cost to taxpayers, consumer opt-in approach that can bring clean energy technology to homeowners and businesses while creating jobs for Floridians," said Hasner. "By helping consumers finance the upfront costs for energy improvements, we'll be taking away the biggest burden for homeowners who want to make their homes more energy efficient and save money."

## How it Works

PACE bonds are issued by a municipality or special district and backed by property tax liens on the buildings of owners who voluntarily take PACE loans from the bond pool. The property owner repays the loan over a 20-year period through an increase on their annual property taxes equal to one-twentieth of the loan plus interest. For many, the annual energy cost savings realized from retrofitting exceed the cost of the annual repayment costs, thereby resulting in no net out-of-pocket expense. If the property is sold before the end of the repayment period, the new owner inherits both the repayment obligation and the financed improvements.

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## Who Likes the Concept

Local governments across the country have been rapidly exploring the PACE concept idea since it accelerates movement toward energy independence & reduces greenhouse gas emissions, it does not provide any financial risk to the municipality, and the projects generated by these private sector clean energy improvements may provide job creation for local economies. Investors have been warming to the idea since, like other taxes, PACE bonds are paid before other claims against the property in the case of foreclosure. Both commercial and residential property owners have been embracing the idea, as Energy Financing Districts offer many additional advantages to traditional retrofit financing including a long repayment period, potentially lower interest rates, tax-deductible interest payments, and an easier access to capital otherwise not available in the second mortgage or home equity market. PACE has also been credited with accelerating the timing of energy retrofits for landlords and tenants who would otherwise not explore a present energy investment in their property in the current economic climate.

## Where it all Began

The Energy Finance District concept began in 2008 with the passage of enabling legislation in California. Since then, Colorado, Illinois, Louisiana, Maryland, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Texas, Vermont, Virginia, and Wisconsin have passed enabling legislation to authorize the creation of Energy Finance Districts. Legislation is currently pending in Arizona and New York, as well.

## Florida's Ability to Keep the Pace

If a successful model can be implemented, House Leaders are also looking at the option to expand the PACE approach to property owners looking to harden their homes through hurricane mitigation improvements. Property owners could offset the costs of their improvements through potential reductions in property insurance costs.

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For more information, please contact a member of our Energy and Utilities practice.

Jeffrey Lynne is a shareholder in the firm's Fort Lauderdale office, representing clients in obtaining and defending land use entitlements in complex zoning, energy, and environmental permitting and regulatory matters.

akerman.com

Akerman Senterfitt
ATTORNEYS AT LAW

**Dallas**
600 North Pearl Street, Suite S1900
Dallas, Texas 75201
214.720.4300

**Denver**
511 Sixteenth Street, Suite 420
Denver, CO 80202
303. 260.7712

**Ft. Lauderdale**
Las Olas Centre II
350 East Las Olas Boulevard
Suite 1600
Ft. Lauderdale, FL 33301-2229
954.463.2700

**Jacksonville**
50 North Laura Street, Suite 2500
Jacksonville, FL 32202-3646
904.798.3700

**Los Angeles**
725 South Figueroa Street, 38th Floor
Los Angeles, CA 90017-5438
213.688.9500

**Madison**
One South Pinckney Street
Suite 700
Madison, WI 53703
608.257.5335

**Miami**
One Southeast Third Avenue
25th Floor
Miami, FL 33131-1714
305.374.5600

**New York**
335 Madison Avenue, Suite 2600
New York, NY 10017-4636
212.880.3800

**Orlando**
CNL Center II at City Commons
420 South Orange Avenue, Suite 1200
Orlando, FL 32801-3336
407.423.4000

**Tallahassee**
Highpoint Center, 12th Floor
106 East College Avenue
Tallahassee, FL 32301
850.224.9634

**Tampa**
SunTrust Financial Centre
401 East Jackson Street, Suite 1700
Tampa, FL 33602-5250
813.223.7333

**Tysons Corner**
8100 Boone Boulevard, Suite 700
Vienna, VA 22182-2683
703.790.8750

**Washington, D.C.**
The Victor Building
750 9th Street, N.W., Suite 750
Washington, DC 20001
202.393.6222

**West Palm Beach**
Esperante Building
222 Lakeview Avenue, Suite 400
West Palm Beach, FL 33401-6183
561.653.5000