MEMORANDUM

Agenda Item No. 7(A)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	March 8, 2016
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Ordinance amending sections 2-2079, 2-2081, 2-2083, 2-2084, 2-2086, and 2-2090 of the Code; amending provisions related to Voluntary Energy Efficiency and Renewable Energy Program and Property Assessment Clean Energy (PACE); repealing section 2-2085 of the Code, relating to funding of program

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 2-9-16 Unincorporated Municipal Service Area Committee. This substitute differs from the original in that it replaces the term "commercial" with non-residential" in the definition of Eligible Participant; it clarifies the "Application" section; it replaces the terms "loan" or "loans" with "financing"; it increases the general limit of financing to 20 percent from 10 percent; it increases the length of time to replay the assessment to 30 years from 20 years; and it clarifies that an energy savings audit is not required for all applications.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz, and Co-Sponsors Commissioner Daniella Levine Cava and Chairman Jean Monestime.

Abigail Price-Williams
County Attorney

APW/smm

Memorandum

MIAMI-DADE COUNTY

Date: March 8, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Fiscal Impact for Ordinance Related to Voluntary Energy Efficiency and Renewable Energy Program and Property Assessment Clean Energy (PACE)

The proposed ordinance relating to Voluntary Energy Efficiency and Renewable Energy Program and Property Assessment Clean Energy (PACE) repeals Chapter 2, Section 2085 related to funding of the program and amends Sections 2079, 2081, 2083, 2084, 2086, and 2090 of the Code of Miami-Dade County.

Currently, the County Code allows for the County to issue bonds secured from non-ad valorem special assessments to provide funds to eligible participants to make qualifying improvements such as energy conservation, renewable energy improvements and wind resistant improvements. This ordinance rescinds this provision. Further, in addition to the County Mayor or County Mayor's designee, it allows for a separate legal entity selected by the Board of County Commissioners (Board), as defined in Florida Statutes, to administer the program.

If the County serves as an administrator, County staffing requirements to perform assessments and meet notice and other program requirements will be evaluated based on the number of participants. However, as administrator, the County can include cost recovery provisions in the agreements with program participants to cover any associated staffing requirements.

With respect to separate legal entities serving as administrators, there will be no fiscal impact to the County as long as each agreement between the County and the separate legal entity, subject to Board approval, includes the provisions for the County to charge the amounts necessary to cover any incurred costs.

Jack Osterholt
Deputy Mayor

Memorandum

MIAMI-DADE COUNTY

Date: March 8, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Social Equity Statement for Ordinance Amending Code Related to Voluntary Energy Efficiency and Renewable Energy Program and Property Assessment Clean Energy

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The proposed ordinance amends the County's Board-approved Property Assessment Clean Energy (PACE) program by removing the provision in the County Code that allows the County to issue bonds secured from non-ad valorem special assessments for eligible participants. This ordinance also amends the County Code to allow, in addition to the County, for a separate legal entity approved by the Board to administer the program.

PACE programs around the nation are intended to offer owners an alternative financing mechanism to make energy efficiency retrofits or improvements to their properties (residential or commercial). More specifically, PACE programs are intended to incentivize expensive investments by offering a long-term financial solution. These investments will directly benefit participating property owners by reducing energy consumption, which will result in reduced energy costs. Property owners also stand to gain from any appreciation in property value as a result of the improvements. Indirect benefits of a PACE program, while not quantifiable, include reduced impacts to the environment as well as growth in clean-energy and other jobs because of the increase in demand for these types of retrofits and improvements.

The proposed ordinance includes language for inclusion in the agreement between the administrator and the eligible participant that discloses "the risk that [the owner] may not be able to refinance or sell the home unless the assessment is paid off in full first." Financial lending institutions have publicly expressed concern with PACE programs. One such concern is that a PACE assessment has a priority over pre-existing mortgages, also known as first-lien loan. With respect to residential properties, the Federal Housing Finance Agency has alerted the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the home has a first-lien PACE loan. As a result, in the worst case scenario property owners may need to pay the assessment in full before refinancing or selling their property. There have been legal challenges to various PACE programs as well.

Jack Osterholt
Deputy Mayor

160069

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: March 8, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(A)

Please note any items checked.

_____ "3-Day Rule" for committees applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Statement of social equity required

_____ Ordinance creating a new board requires detailed County Mayor's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)
3-8-16

ORDINANCE NO. _____

ORDINANCE AMENDING SECTIONS 2-2079, 2-2081, 2-2083, 2-2084, 2-2086, AND 2-2090 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; AMENDING PROVISIONS RELATED TO VOLUNTARY ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAM AND PROPERTY ASSESSMENT CLEAN ENERGY (PACE); REPEALING SECTION 2-2085 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO FUNDING OF PROGRAM; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, this Board wishes to update the provisions in the Code of Miami-Dade County which relate to energy savings programs, including Property Assessment Clean Energy (PACE), with the goal of making such programs available to property owners in the unincorporated areas of Miami-Dade County; and

WHEREAS, interested municipalities may wish to consider adopting these County regulations and joining future County contracts related to PACE, through interlocal agreements, in order to make PACE programs available to all property owners in the incorporated areas of the County,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-2079 of the Code of Miami-Dade County, Florida, is hereby amended as follows:[1]

Sec. 2-2079. Definitions.

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Administrator means the County or [[~~any qualified firm~~]]>>a separate legal entity created pursuant to Section 163.01(7), Florida Statutes that is<< selected by the County [[~~through a competitive process~~]] to administer the Energy Savings Program.

Agreement means a written agreement between the [[~~County~~]] >>Administrator<< and an Eligible Participant setting forth the terms and conditions of the Energy Savings Program.

>>*Assessment* means the non-ad valorem assessment imposed as part of a Property owner's voluntary participation in this Energy Savings Program, and to be collected pursuant to this Article and Florida law.<<

Contractor means a contractor properly certified or registered pursuant to part I or part II of chapter 489, Florida Statutes.

Eligible Participant means any residential or >>non-residential<<[2] [[~~commercial~~]] Property owner who voluntarily participates in this Energy Savings Program and satisfies the eligibility requirements set forth below.

Energy Audit shall mean an energy audit performed by qualified energy auditor or a certified building energy rater [[~~approved by the County~~]] pursuant to Section 2-2086.

Energy Savings Program means the Voluntary Energy Efficiency and Renewable Energy Program authorized by this Article>>, including a Property Assessment Clean Energy (PACE) program<<.

Notice means the notice>>s, as stated in Section 2-2090<< that an Eligible Participant >>or Administrator<<is required to >>record in the public records and, as a courtesy, also<<provide to a purchaser of the Property prior to its sale.

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[2] The differences between the substitute and the original item are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

Property means a property, residential or commercial, located within the boundaries of the County which is being improved pursuant to the Energy Savings Program.

Qualifying Improvement >>includes those improvements authorized by Section 163.08, Florida Statutes.<<[[~~*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 window(s); installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment; and~~

(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; provided, such energy conservation and efficiency improvement and renewable energy improvement shall be made, and affixed, to an existing residential or commercial Property and not to new construction and shall not include a household appliance such as a washing machine or refrigerator that is not permanently fixed to real property.~~]]

Section 2. Section 2-2081 of the Code of Miami-Dade County, Florida, is hereby amended as follows:

Sec. 2-2081. Application.

>>As part of the application process, the following information shall be provided and maintained on file with the Administrator:<<[[~~An Eligible Participant shall submit a complete application to the Administrator for approval. A complete application shall include the following information:~~]]

(1) Proof of ownership and location of the Property. Organizational documents if the Property owner is not on the title as an individual.

(2) Documentation showing the structure or building, subject of the application, is an existing structure or building on the date of application.

(3) A cost estimate for the installation of the Qualifying Improvements completed by a Contractor (including the name and license number of the Contractor). This estimate shall include all construction costs, equipment, permitting fees, recording fees for the assessment of liens, energy audit costs, and contingency fees. Estimated costs shall be reasonable for the scope of the proposed project and in relation to the property value.

(4) Written documentation indicating that the Property owner meets all of the criteria set forth in Section 2-2080(3)—(7) above.

(5) Statement that the Eligible Participant will agree to a non-ad valorem assessment being collected pursuant to Section 197.3632, Florida Statutes to secure any >>financing<<[[~~loans~~]] entered into by the Eligible Participant related to the Energy Savings Program.

(6) Proof that notice was provided to any lender of the Eligible Participant's intent to enter into written agreement with the >>Administrator<<[[~~County~~]] with respect to the Energy Savings Program and in the event of >>financing<<[[~~a loan~~]], the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount.

Section 3. Section 2-2083 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-2083. Agreement terms.

The >>Administrator<<[[~~County~~]] shall enter into a voluntary written agreement with each Eligible Participant. The written agreement shall provide, among other matters, for the following:

(1) All work requiring a license under any applicable law to make a qualifying improvement shall be performed by a Contractor.

(2) The source and amount of funding to be provided to the Eligible Participant.

(3) The maximum limit of the financing for the Energy Savings Program shall not exceed >>20<<[[~~10~~]] percent of the just value of the Property as determined by the County's Property Appraiser on the latest available tax roll unless:

- A higher financing amount is consented to by the mortgage holder on the Property, if one exists; or
- The Energy Audit demonstrates that the annual energy savings from the Qualified Improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(4) Express voluntary consent by the Eligible Participant to accept the non-ad valorem assessment collection process pursuant to Section 197.3632, Florida Statutes.

(5) The length of time for the Eligible Participant to repay the non-ad valorem assessment, provided, that it shall not exceed >>30<<[[~~20~~]] years.

(6) The Eligible Participant shall be responsible for assuring the Qualifying Improvements are completed as reflected in the approved application documents. The Eligible Participant also consents to providing access to the Property [[~~to the County~~]] to verify that the Qualifying Improvements have been completed as proposed in the application.

At the time of a transfer of Property ownership except a transfer resulting from foreclosure, the past due balances of any non-ad valorem assessment under this Subsection shall be due for payment, but future payments shall continue as a lien on the property. At or before the execution of a contract for the sale and purchase of any property for which a non-ad valorem assessment for the Energy Savings Program has been levied and has an unpaid balance due, the seller shall give the prospective purchaser a Notice.

(7) The risks associated with participating in the Energy Savings Program shall be >>clearly<<disclosed >>in plain language<<in the written Agreement, including risks related to the failure of the Eligible Participant to make payments>>, the risk that they may not be able to refinance the home or sell the home unless the Assessment is paid off in full first,<< and the risk of issuance of a tax certificate and loss of the property pursuant to Chapter 197, Florida Statutes.

(8) >>If applicable, the<<[[~~The~~]]cost of an energy savings audit or the cost to complete an estimate of information on energy saving measures, estimated energy savings for each measure, estimated greenhouse gas reductions and estimated cost savings from the projects will be subject to reimbursement upon execution of the written agreement to accept the non-ad valorem assessment.

(9) Description of the Qualifying Improvements, their cost, estimated completion date and estimated savings.

(10) A copy of the Energy Audit shall be included as an Exhibit>>, if applicable<<.

(11) [[~~The Eligible Participant shall agree to apply any rebates provided by an entity other than the County, received for the Qualifying Improvements, towards the repayment of any non-ad valorem assessment.~~

~~(12)~~]] The Eligible Participant shall provide all copies of final permits and inspections to the >>Administrator<<[[~~County~~]] upon completion of the Qualifying Improvements.

>>(12) Notice of the non-ad valorem assessment shall be recorded in the public records for the Property.

(13) No prepayment penalties may be charged or allowed, except that prepayment penalties may be charged and allowed only if the Assessment is paid off in full within five (5) years after the effective date of the Agreement. Any such prepayment penalties shall be clearly disclosed in the Agreement. In addition, a hardship exception shall be provided to the Property owner by the Administrator.

(14) The Agreement shall clearly disclose, in plain language, the interest rate to be charged, including points, as well as any and all fees or penalties that may be separately charged to the Eligible Participant, including prepayment penalties, potential late fees, and potential increases in the applicable interest rate.<<

Section 4. Section 2-2084 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-2084. Administration.

The Energy Savings Program may be administered by the County Mayor or County Mayor's designee or by >>a separate legal entity or entities created pursuant to Section 163.01(7), Florida Statutes, as<<[[~~a qualified energy firm~~]] selected by the >>Board of County Commissioners<<[[~~County through a competitive selection process~~]]. The Energy Savings Program shall be administered in accordance with this Article and any additional regulations and orders adopted by the Board of Miami-Dade County Commission from time to time.

Section 5. Section 2-2085 of the Code of Miami-Dade County is hereby repealed as follows:

[[~~Sec. 2-2085. Funding~~

~~The County may issue bonds or notes secured solely from non-ad valorem special assessments collected pursuant to Chapter 197, Florida Statutes and is authorized by this Article to provide funds to Eligible Participants to make Qualifying Improvements. The County may also make available to the Energy Savings Program, federal or state grant funds, private loans from a financial institution or not-for-profit sources of funds.~~]]

Section 6. Section 2-2086 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-2086. Energy audit.

At a minimum, an Energy Audit for the Energy Savings Program shall 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 >>Energy Savings Program<<[[~~County~~]].

Section 7. Section 2-2090 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 2-2090. Notice to purchaser>> and in public records<<.

>>(1) As a courtesy, at<< [[~~At~~]] or before the execution of a contract for the sale and purchase of any property for which a non-ad valorem assessment for the Energy Savings Program has been levied and has an unpaid balance due, the seller shall give the prospective purchaser the following >>courtesy<<notice in writing:

>>QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE. --<< The property being purchased is located within the jurisdiction of >>a local government or entity<< [[~~Miami-Dade County~~]] that has placed an assessment on the property pursuant to Section 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. >>This assessment will require an additional payment to the Tax Collector until such time as the assessment is fully paid off.<<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.

>>(2) Failure to provide the courtesy notice referenced above to a purchaser of the Property shall have no effect on either the validity of any Assessment or any obligation by a Property owner.

(3) Notice, as provided below, shall be recorded in the public records for the Property within five (5) days after execution of the Agreement:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.--This property 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. This assessment will require an additional payment to the Tax Collector until such time as the assessment is fully paid off. 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.<<

Section 8. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 9. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 10. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency:

Prepared by:

Abbie Schwaderer-Raurell

Prime Sponsor: Commissioner Jose "Pepe" Diaz
Co-Sponsors: Commissioner Daniella Levine Cava
Chairman Jean Monestime