

RESOLUTION R-17-131

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING REAL PROPERTY, RECOGNIZING THE PROVISION OF FINANCING BY OTHER SPECIAL PURPOSE LOCAL GOVERNMENTS CONCERNING VOLUNTARY IMPROVEMENTS TO REAL PROPERTY BY PRIVATE PROPERTY OWNERS, AS AUTHORIZED BY THE LEGISLATURE PURSUANT TO SECTION 163.08, FLORIDA STATUTES; RECOGNIZING THE ALTERNATIVE MECHANISM FOR THE FINANCING OF ENERGY CONSERVATION AND EFFICIENCY IMPROVEMENTS, RENEWABLE IMPROVEMENTS, AND WIND RESISTANCE IMPROVEMENTS SOMETIMES COMMONLY CALLED “PROPERTY ASSESSED CLEAN ENERGY” OR “PACE”; PROVIDING FOR DIRECTION; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY AND AN PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.08, Florida Statutes, entitled “Supplemental authority for improvements to real property” (the “Supplemental Act”), provides that certain improvements to real property for energy conservation and efficiency, renewable energy improvements, or wind resistance improvements, may qualify for financing made available by certain local governments (in addition to and other than Manatee County) to private property owners, with repayment over time being statutorily collected on the property owners’ annual tax notice as a non-ad valorem assessment under the uniform collection process; and

WHEREAS, Sections and 163.01(7), and 163.08 Florida Statutes, allow for, and contemplate the creation of distinct and separate legal entities, and specifically define these separate legal entities as a "local government" for the purposes of enabling property owners to voluntarily finance such improvements with such special purpose local government assistance, and this accomplishes what the Legislature describes as a compelling state interest in Section 163.08(1), Florida Statutes; and

WHEREAS, several focused separate legal entities, which can be characterized as special purpose local governments, have been created and established within the state to provide the financing, documentation, levy and imposition of non-ad valorem assessments as provided by the general law provisions of Section 163.08, Florida Statutes, and are accordingly recognized by the Florida Department of Revenue as local governments directed and authorized by the Legislature to separately impose and collect those non-ad valorem assessments only under the uniform collection method provided for in Section 197.3632, Florida Statutes and Chapter 12D-18 of the Florida Administrative Code; and

WHEREAS, this financing alternative is sometimes commonly called “PACE” or “property assessed clean energy”, although neither this acronym nor the words “property assessed clean energy” appear in the relevant statutes in Florida; and

WHEREAS, it is in the best interest of the public health, safety and welfare of Manatee County to alternatively allow for this voluntary funding and financing opportunity for private property owners, and to undertake the activities described in Section 163.08, Florida Statutes, and to avoid liability, cost, staff time, the use of significant County resources, as well as any misperception that County taxpayers or the County treasury are underwriting or regulating this activity authorized by general law; and

WHEREAS, the process best involves interlocal coordination and good communication with other special purpose local governments which specialize in this governmental financing; and there is no legal financial obligation created by this Resolution upon the County or any municipality in Manatee County by acting to inspire service to the entire County as was encouraged and contemplated by the Legislature in its statewide approach; accordingly, Manatee County can more simply and efficiently accomplish the same compelling state interest by adopting policy direction that recognizes the special purpose local governments described in Section 163.08 (2)(a), Florida Statutes, are acting by law to more uniformly serve any private property owner in the entire County, and encourage them to do so based upon continued compliance with two fundamental tenets: (1) compliance with the general law always, and (2) the use of fair and common-sense guidelines in interacting with all property owners.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSION OF MANATEE COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are incorporated in this Resolution as if fully set forth herein and are approved and adopted as Findings of the Board.

SECTION 2. ACCOMPLISHMENT OF A COMPELLING STATE INTEREST; ABSOLUTE LIMITATION CONCERNING COUNTY LIABILITY.

(A) Any financing assistance for Qualifying Improvements pursuant to the Supplemental Act shall be conducted solely between a local government other than the County and an interested private property owner, done pursuant to general law, and shall not be construed to be the legal, financial or administrative responsibility of the County in any manner whatsoever.

(B) This Resolution provides for accomplishment of a compelling state interest, recognizes and carefully encourages uniform and scalable processes statewide to finance energy related and storm hardening improvements to real property, and creates local economic development and local employment. Even though this Resolution affords service to interested private property owners who voluntarily desire to take advantage of and use the financing and supplemental authority for improvements to real property described in Section 163.08, Florida Statutes, all such activities must be independently accomplished without cost, liability, or any demand upon the County's credit or use of significant County staff time or resources.

(C) In no event shall the County, as served by any special purpose local government as a result of this Resolution, be held jointly liable for the torts of the officers or employees of the special purpose local government, or any other tort attributable to the special purpose local government, and each special purpose local government shall be solely liable for any torts

attributable to it or for torts of its officers, employees or agents, to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. Nothing in this Resolution shall be construed to inure to the benefit of any third-party or for allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(D) By law every special purpose local government shall at all times be a qualified, distinct and separate special purpose local government funding and financing instrumentality separate and apart from the County and separate from the County's treasury, fully authorized to serve pursuant to Section 163.08, Florida Statutes; and, neither the County, nor the local governments who are either incorporators or members of, or have joined, or are served by each such special purpose local government, or any subsequently served or participating local government in the affairs of the special purpose local government, shall be liable for the actions of or in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of any special purpose local government described in Section 163.08(2)(a), Florida Statutes, or its successor in function, and neither that the special purpose local government nor any agent, employee, officer or official of same shall have any authority or power to otherwise represent or obligate either the County, or any other local government in any manner as a result of this Resolution.

(E) The County shall not incur nor ever be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by any other local government pursuant to Section 163.08, Florida Statutes. No special purpose local government acting pursuant to Section 163.08, Florida Statutes, and this Resolution shall be empowered or authorized in any manner to create a debt as against the state or the County, and shall not pledge the full faith and credit of the state or the County in any manner whatsoever. No revenue bonds or debt obligations of any special purpose local government acting pursuant to Section 163.08, Florida Statutes, shall ever pledge or imply any pledge that the County shall be obligated to pay the same or the interest thereon, nor state or imply that such obligations payable from the full faith and credit or the taxing power of the state or the County as a result this Resolution. The issuance of revenue or refunding bonds by any such special purpose local government under the provisions of law, the special purpose local government's charter or governance documents, or any other agreement or resolution shall not, as the result of this Resolution or otherwise, be deemed in any manner, directly or indirectly or contingently, to obligate the County ever to levy or to pledge any form of ad valorem taxation or other municipal or county revenues or to make any appropriation for their payment whatsoever.

(F) Upon execution by the respective property owners and the special purpose local government, the statutorily required financing agreement or a summary governmental notice or memorandum thereof shall be recorded in the Official Records as required by general law which provides constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments from the date of recordation.

(G) In a reasonably cooperative and uniform manner each special purpose local government shall timely provide a digital copy to the property appraiser or tax collector of the recorded financing agreement or other digital summary thereof, the most recent property

identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information and test-rolls necessary for the tax collector to collect such amounts as a non-ad valorem assessment on behalf of the special purpose local government pursuant to Sections 197.3632 and 163.08, Florida Statutes, or their successors in function.

(H) Each special purpose local government shall acknowledge to every property owner that by law these non-ad valorem assessments must be collected only pursuant to Sections 197.3632 and 163.08, Florida Statutes; and, are not imposed by the County, the property appraiser or the tax collector, and that they are levied and imposed solely by the special purpose local government, and only then upon voluntary application of the private property owner as expressly enabled, authorized and encouraged by Section 163.08, Florida Statutes, to accomplish a compelling state interest with local government assistance.

(I) The special purpose local government shall at all times acknowledge that the statutory duties of the property appraiser and the tax collector in the County, under Section 197.3632, Florida Statutes, are ministerial and the property appraiser and tax collector are by law without discretion with regard to the imposition of non-ad valorem assessments and collection on the tax notice once the affected private property owner has voluntarily entered into the statutorily required financing agreement and evidence of the non-ad valorem assessment through the required notice is recorded; and the special purpose local government is solely responsible for the local government role in complying with the requirements of Sections 197.3632 and 163.08, Florida Statutes.

(J) The special purpose local government shall comply with the statutory responsibility to enter into a separate written agreement required by Section 197.3632(2), Florida Statutes, accept the terms specified by Sections 197.3632(2) and 192.091(2)(b)2., Florida Statutes, for reimbursement and compensation of tax collectors and property appraisers, and allow for payment of such amounts by deduction as the non-ad valorem assessments are collected. The special purpose local government shall be solely responsible for timely and professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials and offices.

(K) The special purpose local government as the local government imposing the non-ad valorem assessments, not the County, shall be solely responsible for compliance with all applicable law and all matters associated with origination, funding, financing, administration, and collection (in concert with the uniform method of collection) of each of the resulting non-ad valorem assessments.

SECTION 3. GENERAL LAW COMPLIANCE; ON-GOING GUIDELINES.

(A) All financing activities of any separate legal entity or special purpose local government described in the Supplemental Act shall comply always with general law, and specifically the provisions of Section 163.08, Florida Statutes, Section 197.3632, Florida Statutes, or their successors in function, and all applicable Florida Administrative Code provisions.

(B) In addition to a commitment to full and complete compliance with the provisions of general law, and to gain the continued informal cooperation, coordination and support of the County, each special purpose local government shall continually provide the following financing and common sense non-ad valorem assessment collection program service components:

(1) Efficiency Standards: when practicable and available, provide disclosure to participating property owners by contractors of efficiency standards established by the U.S. Department of Energy, U.S. Environmental Protection Agency, or other state agencies, as applicable;

(2) Address Complaints and Disputes: receive, manage, track, timely resolve and publicly report in its comprehensive annual financial report on complaints from property owners and contractors, and develop and provide procedures for the investigation and toward informal dispute resolution between property owners and contractors in a timely manner;

(3) Payment Inquiries: provide a convenient, prompt and on-going means to handle all payment inquiries, including prepayments and payment reconciliation;

(4) Communication and Reporting: provide continual communication, coordination and cooperation with the County, including a periodic or a real-time reporting regime available to the County and the public sharing reasonably similar information to that provided to other communities statewide, using data derived as a residual from the special purpose local government's special assessment origination activity within the County;

(5) Data Security and Privacy: conform with applicable state and federal law concerning data security and property owner privacy which protects records and information in proportion to the sensitivity of the information, and allow each property owner the ability to opt-out of having the property owner's information shared with third parties, except where expressly permitted by state and federal law;

(6) Serve the Public Trust: prohibit unfair, deceptive, abusive, misleading, or similar inappropriate practices which violate applicable laws or diminish the public trust;

(7) Payment for Improvements and Services Provided: provide for the adoption, public promulgation, and enforcement of anti-kickback policies and procedures that prohibit illegal financial or other monetary incentives to contractors in exchange for or related to such contractor being awarded work in conjunction with the financing of a qualifying improvement, excepting payment for the qualified improvement and contractor's installation of the qualifying improvement;

(8) No Disparate Treatment of Protected Classes: prohibit disparate treatment of property owners based on race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information; and

(9) Fair Dealing: engage in fair dealing and full disclosure always, and develop reasoned and fair rates and charges, create enforcement mechanisms, enforce reasonable procedures and ensure fair practices toward contractors, and protecting property owners from excessive and unjustified prices and charges.

(C) In the event any special purpose local government fails to incorporate and continually provide for all the foregoing service components and to abide by the general law and these reasonable service component guidelines, the County Manager or the Chair, either alone or upon advise and consent with the other, may informally, formally and/or publicly announce and terminate any informal County support hereunder as to one or more such separate legal entities, inform any County or state officials or agencies of any concerns, and do so at any time, in the sole discretion of County upon written notice to one or more, or all such special purpose local governments.

SECTION 4. TERRITORIES EMBRACED. The provisions of this Resolution shall embrace all unincorporated territories within the legal boundaries of Manatee County, Florida. The intention of the County Commission being to allow for a multitude of non-exclusive service opportunities to interested private property owners, so that all unincorporated property owners have a wide variety of competitive choices from qualified local governments. Nothing in this resolution shall be construed as excluding any municipality from (a) creating an additional, separate or standalone program at any time, or (b) adopting a resolution to authorize the program(s) approved under this Resolution to operate within its boundaries in accordance with the terms hereof.

SECTION 5. CONFIRMATION AND DIRECTION.

(A) This Resolution achieves a compelling state interest, inspires choices and service to interested property owners, and may also be deemed and construed as confirming the ability to serve, consent, or allowing service by these special purpose local governments to private property owners in conformance with this Resolution and general statutory law upon voluntary application by property owners within Manatee County. The Board hereby confirms and approves for execution the list of interlocal agreement(s) between Manatee County and the special purpose local government(s), listed and attached in Exhibit A hereto.

(B) Upon this Resolution becoming effective, the Chair of the Board of County Commissioners and the County Administrator are hereby authorized and directed to execute and deliver the interlocal agreement(s), substantially in the forms attached hereto as exhibits, with such insubstantial changes, insertions and omissions, and such exhibits thereto, as may be approved by the Chairman and the County Administrator, the execution thereof being conclusive evidence of such approval. The Board directs and authorizes its Chair, County Administrator, officers, attorneys and other agents or employees of the County to do all acts and things required of them by and to generally advance the purposes of this Resolution, and the agreements authorized, for the full punctual accomplishment of the directions of the Board and in this Resolution; and, the Chair, his or her designee, and the County Administrator, officers, attorneys and other agents or employees of the County are hereby respectively directed and authorized to cooperatively execute and deliver any and all communications, papers and instruments and to do and cause to be done all acts and things necessary to accomplish such

direction and to accomplish generally the purposes of this Resolution and the authorized agreements.

SECTION 6. CONFLICT; RESOLUTIONS IN CONFLICT ARE REPEALED.

This Resolution does not prohibit the Board from entering into one or more non-exclusive interlocal agreements with special purpose local governments consistent with general law concerning the subject matter hereof, as it sees fit and in its sole discretion. All resolutions or parts of resolutions on in conflict herewith be, and the same are hereby repealed to the extent of such conflict.

SECTION 7. SUPPLEMENTAL RESOLUTIONS. The Board reserves the discretion, from time to time, to adopt resolutions amending and supplementing this Resolution to add or remove agreements from those approved in Section 4. hereof.

SECTION 8. SEVERABILITY. All other provisions of any resolution of the Board not inconsistent with this Resolution shall remain in full force and effect. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

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SECTION 8. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED IN OPEN SESSION WITH A QUORUM PRESENT AND VOTING THIS 7th **day of** November, 2017.

**BOARD OF COUNTY
COMMISSIONERS OF
MANATEE COUNTY, FLORIDA**



[Signature]
CHAIRPERSON

ATTEST:

ANGELINA M. COLONNESO
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

By: Robin Pata, Jr.
DEPUTY CLERK

EXHIBIT A

LIST OF APPROVED INTERLOCAL AGREEMENTS

1. FLORIDA PACE FUNDING AGENCY