

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1603

FLORIDA BANKERS ASSOCIATION,

Appellant,

L.T. Case No.: 2014 CA 000548

vs.

STATE OF FLORIDA, et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL
CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

AMICUS CURIAE BRIEF
FOR
ASSOCIATED BUILDERS AND CONTRACTORS OF FLORIDA, INC.'S

RICHARD WATSON, ESQ.
Florida Bar No. 185138
rick@rwatsonandassociates.com
General Counsel and Chief Lobbyist
Associated Builders and Contractors of
Florida
P.O. Box 10038
Tallahassee, FL 32301
(850) 222-0000

*Attorney for Amicus Curiae, Associated
Builders and Contractors of Florida, Inc.*

TABLE OF CONTENTS

IDENTITY AND INTEREST	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. The PACE Act Allows Builders and Contractors to Meet State-Imposed Energy Conservation Requirements	3
II. The PACE Act Brings Qualified Builders to Property Owners Through a Standardized, Streamlined Process.....	5
III. The PACE Act Allows for Significant Local, Private Sector Job Creation..	7
IV. The PACE Act’s Wind and Hurricane Protection Retrofits Cure Susceptible Building Infrastructure While Reducing Insurance Premiums and Insurable Losses.....	9
CONCLUSION	12

TABLE OF AUTHORITIES

Rules

Fla. R. App. P. 9.100(1).....	16
Fla. R. App. P. 9.210(a)(2).....	16

Statutes

§ 163.08, Fla. Stat	1, 5, 9
§ 553.886, Fla. Stat. (2014).....	3
Ch. 2008-191, Laws of Fla	4

Other Authorities

Chad S. Friedman & MacAdam J. Glinn, <i>Florida Is Keeping Pace: House Bill 7179</i> , Fla. B.J., (September/October 2010).....	7
Curtis Cartier, <i>Sonoma County Sues to Keep Solar Program Going</i> , MetroActive News, 2010, http://www.metroactive.com/bohemian/09.08.10/news-1036.html	8
Douglas Elbinger, <i>Renewable Energy Contractors Benefit from PACE Financing</i> (Oct. 24, 2014), http://www.renewableenergyworld.com/rea/blog/post/print/2014/10/michigan-contractors-benefit-from-pace	6-7
Fla. Bldg. Code, Energy Conservation § 101.1 <i>et. seq.</i> (2010)	3
Fla. Bldg. Code, Energy Conservation § 101.1 <i>et. seq.</i> (2014).....	5
Florida Division of Emergency Management, <i>Florida Hurricane Loss Mitigation Program Report to the Florida Legislature</i> , (2008), http://www.floridadisaster.org/mitigation/Documents/RCMPAnnualRptSFY07-08-final-secured.pdf	10
Florida Staff Analysis, H.B. 7179, (4/14/2010).....	11
Florida State University, <i>Home Hardening Incentive Programs: Innovative Finance Concepts for Wind Mitigation & Home Hardening</i> , (2010),	

<http://www.stormrisk.org/sites/default/files/Final%20ReportDesigning%20Financing%20Programs%20for%20Residential%20Wind%20Mitigation.pdf> 9-10

Jason R. Wiener & Christian Alexander, *On-Site Renewable Energy and Public Finance: How and Why Municipal Bond Financing is the Key to Propagating Access to On-Site Renewable Energy and Energy Efficiency*, 26 Santa Clara Computer & High Tech. L.J. 559 (2009), <http://digitalcommons.law.scu.edu/chtlj/vol26/iss4/3>.....8

Lynn M. Gollin, *Don't Be Left Out in the Cold: Florida's New Energy Code* (2012), <http://www.gordonrees.com/publications/2012/don-t-be-left-out-in-the-cold-florida-s-new-energy-code>.....3

Washington A.P., *News in Brief*, Alliance Times-Herald, (Sep. 18, 2014).....8

IDENTITY AND INTEREST

Associated Builders and Contractors of Florida, Inc. (“ABC”) is a Florida nonprofit corporation organized to protect, promote, and represent the interests of Florida’s construction industry. ABC has the strongest network of commercial and industrial contractors in the state of Florida with five chapter offices serving over 2000 companies in every major construction market.

ABC’s interest in this case stems from the impact this case will have on Florida’s construction industry. As the merit shop construction industry’s voice within legislative, executive, and judicial forums across the state, the enforcement of section 163.08, Florida Statutes (the Florida Property Assessed Clean Energy Act, (hereafter the “PACE Act” or the “Act”)) is of great interest to ABC. Importantly, the Act will greatly facilitate the creation and retention of local, private-sector jobs, particularly in the building, construction, and renewable energy fields, and will assist contractors in meeting Florida’s energy conservation demands.

SUMMARY OF ARGUMENT

The Florida Building Code is keeping pace with the Legislature’s compelling interests in achieving greater energy conservation and sustainability of Florida’s buildings. In 2010, the Florida Legislature passed one of the most

stringent building energy codes in the nation. This change was in response to rising national energy efficiency standards.

To meet Florida's ambitious energy efficiency code requirements, builders and contractors across the state must be prepared to retrofit and equip homes and businesses with energy-reducing and wind-resisting improvements, including those made possible by the PACE Act. The PACE Act provides an important mechanism through which builders, contractors, and property owners alike can meet state-imposed building and construction standards. The PACE Act's legality must be upheld.

The PACE Act addresses three of the largest hurdles associated with retrofitting energy improvements: access to funds, access to information, and access to vetted contractors. PACE helps commercial, industrial, and residential property owners implement energy efficiency projects, strengthen existing structures, eliminate waste, and save money on utility bills using innovative financing options. It also brings competent local builders and contractors to consumers, allowing property owners to contract directly with qualified contractors through a streamlined and standardized process.

Finally, the PACE Act allows for significant local, private-sector job creation and retention. In particular, for builders and contractors, PACE helps

create jobs for Floridians at a critical time—fulfilling yet another important state interest.

ARGUMENT

I. The PACE Act Allows Builders and Contractors to Meet State-Imposed Energy Conservation Requirements.

In 2010, to match its policies to promote the use of renewable energy, the Florida Legislature passed one of the most rigorous building energy codes in the nation. *See Fla. Bldg. Code, Energy Conservation § 101.1 et. seq.* (2010), hereinafter the “Energy Code”; *see also* Lynn M. Gollin, *Don’t Be Left Out in the Cold: Florida’s New Energy Code* (2012), <http://www.gordonrees.com/publications/2012/don-t-be-left-out-in-the-cold-florida-s-new-energy-code>. By law, the provisions of the Florida Building Code must “facilitate and promote the use of cost-effective energy conservation, energy-demand management, and renewable energy technologies in buildings.” § 553.886, Fla. Stat. (2014).

Although Florida’s Energy Code has been in effect statewide since 1979, it is now based on the International Energy Conservation Code (“IECC”), a model code adopted by many states and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency. *See Energy Code*. Florida’s newest Energy Code became effective on March 15, 2012. *Id.* This new Energy Code must be incorporated into the design and construction of all new residential and commercial buildings. Major repairs,

additions, and equipment replacements in existing residential and commercial buildings must also conform to the Energy Code. *Id.*

Florida's Energy Code mandates constantly increasing energy performance of residential and commercial buildings, emphasizing energy planning and conservation practices. *Id.* For example, in 2008, the Legislature enacted HB 697, which addressed a wide range of building construction issues and provided for a schedule of increases in energy performance by 20, 30, 40 and 50% for the 2010, 2013, 2016, and 2020 editions of the Energy Code, respectively. *See* ch. 2008-191, Laws of Fla. The Energy Code further requires the adoption of energy efficient thermal and lighting sources, pool pumps, and heating, ventilation, and air-conditioning ("HVAC") systems, specifically. *Id.*

Many of the Legislature's energy-related construction mandates have caused apprehension for residential and small business contractors. *See* Gollin, *supra*. Primarily, these contractors are concerned with costs associated with replacing outdated systems and ensuring that new, more efficient retrofits are installed when property owners engage in major building renovations. *Id.* While most consumers remain blissfully unaware of the impact the new Energy Code will have on their wallets, the reality is that job prices might double for properties needing extensive sealing, replacing, or updating to meet the Energy Code's strict energy and wind-resistance standards. *Id.*

The Energy Code also encourages “innovative approaches and techniques to achieve the effective use of energy”—such as PACE Act improvements. Energy Code, at § 101.3. With the PACE Act, neither builders nor consumers bear the daunting upfront costs of energy-saving retrofits. Many states throughout the nation have enacted green energy building codes, and almost as many have enacted PACE enabling statutes or PACE-like financing programs to help achieve their energy conservation goals. In short, the PACE Act assists builders and contractors in meeting Florida’s heightened energy-related construction standards by providing much-needed access to capital and financing, which allows property owners to make the necessary efficiency retrofits.

II. The PACE Act Brings Qualified Builders to Property Owners Through a Standardized, Streamlined Process.

Through the implementation of PACE programs under the PACE Act, consumers can rely on qualified contractors to meet their building modernization needs while capturing compelling energy savings.

Florida’s PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. *See* § 163.08, Fla. Stat. Through the PACE Act, homeowners are not “loaned” money. To the contrary, contractors are paid directly to make efficiency improvements that have been defined as qualifying improvements under the Act. *Id.* The Act’s programs connect local government,

capital providers, property owners, architects, engineers, builders, contractors, and installers via a streamlined process to provide financing for well-executed projects with demonstrable energy savings and structural hardening measures.

The PACE Act allows for as much flexibility or standardization as local governments desire. The Act creates highly standardized project origination, scenario development, and underwriting methodologies that have earned the confidence of building owners to invest in energy efficiency and renewable energy at scale. In addition, PACE program marketing and outreach provide a source of customer generation for contractors across the state.

Almost any project that reduces energy usage, installs renewable energy systems, or reduces the potential for wind damage, is eligible for PACE financing. Typical energy conservation measures (“ECMs”) financed by the PACE Act include insulation, caulking, weather-stripping and air sealing, new energy-efficient windows, roof retrofits and doors, energy control and recovery systems, HVAC system upgrades, new energy-efficient lighting fixtures and daylighting systems, solar photovoltaic (“PV”) energy (electricity), solar thermal (hot water), wind (electricity) and geothermal (HVAC) energy systems. *See Douglas Elbinger, Renewable Energy Contractors Benefit from PACE Financing* (Oct. 24, 2014), <http://www.renewableenergyworld.com/rea/blog/post/print/2014/10/michigan-contractors-benefit-from-pace>.

Through the PACE Act, qualified contractors can install these improvements to the benefit of consumers, the construction industry and Florida's economy as a whole.

III. The PACE Act Allows for Significant Local, Private Sector Job Creation.

Stimulation of the state's construction industry, an objective of great interest to Floridians and its policymakers, is an additional benefit afforded by the enactment of the PACE Act. By creating demand for energy efficient, renewable energy and wind-resistance improvements, the PACE Act holds promise of significant construction job creation and retention.

The demand for construction and building professionals generated by Florida's PACE programs could create thousands of local, private-sector jobs. Construction jobs were among those hardest hit during the recent recession. In 2010, the year the PACE Act was enacted, nearly 45,000 construction jobs were lost in the state of Florida. *See* Chad S. Friedman & MacAdam J. Glinn, *Florida Is Keeping Pace: House Bill 7179*, Fla. B.J., (September/October 2010), at 44, 47. Protecting important programs like PACE is critical to the Legislature's efforts to preserve not only Florida's environment, but also its economy.

With the PACE Act, an increased number of local jobs will be created and retained as a direct result of funding existing building retrofits, particularly in the energy efficiency, renewable energy, and construction fields. The Act will create

a whole new market for renewable energy contractors. See Jason R. Wiener & Christian Alexander, *On-Site Renewable Energy and Public Finance: How and Why Municipal Bond Financing is the Key to Propagating Access to On-Site Renewable Energy and Energy Efficiency*, 26 Santa Clara Computer & High Tech. L.J. 559 (2009), <http://digitalcommons.law.scu.edu/chtlj/vol26/iss4/3>. Job markets benefit from expanded access as work for contractors, installers, electricians, energy auditing companies, and others grows to meet the new demand for PACE improvements. *Id.* at 581. The United States government is even planning to train veterans to become solar panel installers. Washington A.P., *News in Brief*, Alliance Times-Herald, Sept. 18, 2014, at 2. Other jurisdictions with active PACE programs have even seen in-migration of the contracting community to serve the increased demand the programs facilitate. See Curtis Cartier, *Sonoma County Sues to Keep Solar Program Going*, MetroActive News, 2010, <http://www.metroactive.com/bohemian/09.08.10/news-1036.html>.

PACE Act financing makes possible the widespread installation of energy retrofits which directly benefit the construction industry, consumers, and communities across Florida. Improved properties that achieve greater energy efficiency, utilize renewable energy technology and stand more resistant to high wind events, garner higher property values, increased rates of occupancy, and greater marketability. This creates a stronger real estate market in Florida.

Overall, the PACE Act results in more sustainable, greener communities made possible by the Act's financing and the work of qualified local builders and contractors.

IV. The PACE Act's Wind and Hurricane Protection Retrofits Cure Susceptible Building Infrastructure While Reducing Insurance Premiums and Insurable Losses.

Section 163.08 of the PACE Act recognizes the burden affecting all improved property as a result of wind and hurricane damage, as well as the public benefit of energy and hurricane mitigation policies. PACE programs provide property owners with instant access to the funds needed to upgrade their buildings and protect their properties from major storm damage. More than any other state, Florida property owners will gain significant benefits from the hurricane resiliency improvements made available through the PACE Act.

With approximately 79% of the state characterized as "coastal," and the insured value of coastal properties reaching \$3.119 trillion, the value of mitigation and the vulnerability to loss are plain. See Florida State University, *Home Hardening Incentive Programs: Innovative Finance Concepts for Wind Mitigation & Home Hardening*, p.3 (2010), <http://www.stormrisk.org/sites/default/files/Final%20ReportDesigning%20Financing%20Programs%20for%20Residential%20Wind%20Mitigation.pdf>. For example, Hurricane Andrew (1992) caused \$25 billion in damage and killed forty-three people. See Florida Division of

Emergency Management, *Florida Hurricane Loss Mitigation Program Report to the Florida Legislature*, p.2 (2008), <http://www.floridadisaster.org/mitigation/Documents/RCMPAnnualRptSFY07-08-final-secured.pdf>. From 2004 to 2008 alone, Florida was hit by nine hurricanes resulting in 2.9 million claims and \$31.1 billion in insured losses. *Id.* In the aftermath of such devastation, the Florida Legislature created a series of tools to stabilize the economy and insurance industry, including Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, and the Hurricane Loss Mitigation Program. *Id.*

Legislative research indicates that improving the resiliency of the building stock located in hurricane-prone regions can markedly reduce loss and damage. *Id.* Local promotion and financing of home mitigation and strengthening against hurricanes and other windstorms—through programs like PACE—can be beneficial to Florida homeowners, the state and local governments, as well as partnering businesses in related industries, such as construction, banking, and insurance. *See* Florida State University, at 2. The PACE Act’s provision of upfront capital directly benefits builders and contractors hired to make energy retrofits and wind resistance improvements by overcoming the chief obstacle to making the improvements—securing the funds. Additionally, with energy bills and hurricane insurance premium rates at record highs, property owners can use PACE financing to address both vital issues at the same time.

For example, insurance companies often require improvements or repairs as a condition of obtaining property insurance, necessitating the installation of many PACE eligible improvements just to obtain or maintain coverage. Without the PACE Act, these mandated improvements would be deferred or financed using alternative lending options. Deferral adversely impacts builders and contractors because the improvements are simply not made. Alternative lending options adversely impact property owners through acceleration of repayment provisions.

The PACE Act likewise supplements existing premiums and discounts for property owners with wind and hurricane mitigation improvements. Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties with installed wind and hurricane mitigation improvements. *See* Florida Staff Analysis, H.B. 7179, (4/14/2010). Mitigation discounts were initially given at 50% of the actuarial value of the discount. In 2006, the legislature amended the mitigation discount law (§ 627.0629(1)(a), Fla. Stat.) to require the Office of Insurance Regulation to reevaluate these discounts and require insurers to give full actuarial value for them. The PACE Act provides a mechanism for property owners to make wind mitigation improvements to their properties, making existing premiums affordable to the average property owner and, as an added benefit, stimulating the construction industry through increased

jobs and revenue for local builders and contractors hired to install the improvements.

CONCLUSION

The PACE Act supports a number of compelling state interests, many of which extend far beyond their environmental and energy-reducing impacts. The Act holds promise for Florida's construction industry, its economy, and its consumers. The builders and contractors of Florida ask that this Court affirm the validity of the disputed bonds.

Respectfully submitted this ___ day of December, 2014.

RICHARD WATSON, ESQ.

Florida Bar No. 185138

rick@rwatsonandassociates.com

General Counsel and Chief Lobbyist

ABC of Florida

P.O. Boc 10038

Tallahassee, FL 32301

850-222-0000

*Attorney for Associated Builders and
Contractors of Florida, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Florida Courts E-Filing Portal upon the following attorneys, as well as all Electronic Service Recipients listed on the Electronic Service List of the Florida Courts E-Filing Portal, on this 11th day of December, 2014:

Ceci Culpepper Berman, Esq.
100 S. Ashley Dr., Ste. 1130
Tampa, FL 33602
cberman@bhappeals.com
Counsel for Florida Bankers
Association (SC14-1603)

J. Steven Menton, Esq.
119 S. Monroe St., #202
Tallahassee, FL 32301
smenton@rutled.ge-escerriacom
Counsel for Robert Reynolds
(SC14- 1618)
Via U.S. Mail

Gregory T. Stewart, Esq.
Lynn M. Hoshihara, Esq.
Carly J. Schrader, Esq.
P.O. Box 1108
Tallahassee, FL 32302
gstewart@ngnlaw.com
lhoshihara@ngnlaw.com
cschrader@ngnlaw.com
legal-admin@ngnlaw.com
Co-counsel for Appellee (Fla. Dev.
Finance Corp.)

Assistant State Attorney Georgia
Cappleman
Second Judicial Circuit
cappleman@leoncountyfl.Gov

Assistant State Attorney Phillip
D. Havens
Seventh Judicial Circuit
havensd@sao7.org
olmsteadk@sao7.org

The Honorable Glenn L. Hess State
Attorney, Fourteenth Judicial
Circuit
421 Magnolia Avenue Panama
City, FL 32401
glenn.hess@sa14.fl.gov
Via U.S. Mail

Assistant State Attorney Damien N.
Kraebel
Sixth Judicial Circuit
Sa6eservice@pihellascounty.org

Mark G. Lawson, Esq.
James C Dinkins, Esq.
2860 Braddock Ct
Tallahassee, FL 32308
mlawson@markglawson.com
jdinkins@markglawson.com
ccavallaro@markglawson.com
kgfraser1@markglawson.com
Counsel for Robert Reynolds (SC14-
1618)

Raoul G. Cantero, Esq.
T. Neal McAilley, Esq.
Jesse L. Green, Esq.
200 S. Biscayne Blvd.
Miami, FL 33131
rcantero@whitecase.com
nmcailley@whitecase.com
jgreen@whitecase.com
ldonringuez@whitecase.com
tbailey@whitecase.com
Counsel for Appellee (Fla. Dev.
Finance Corp.)

Jane Kreuzler-Walsh, Esq.
Rebecca Mercier-Vargas, Esq.
Stephanie L. Serafin, Esq.
501 S. Flagler Dr., #503
West Palm Beach, FL 33401
janewalsh@kwcvpa.com
rvargas@kwcvpa.com
sserafin@kwcvpa.com
eservice@kwcvpa.com
Counsel for Appellee
(Fla. Dev. Finance Corp.)

L. Thomas Giblin, Esq.
2502 N. Rocky Point Dr., #1060
Tampa, FL 33607
tgiblin@ngn-tampa.com
Co-counsel for Appellee (Fla.
Dev. Finance Corp.)

Assistant State Attorney Kathryn
P. Heaven
Seventeenth Judicial Circuit
courtdocs@sao17.state.fl.us
kheaven@sao17.state.fl.us
mwilliams@sao17.state.fl.us

Assistant State Attorney Ada Carmona
Thirteenth Judicial Circuit
mailprocessingstaff@sao13th.com
carmona_a@sao13th.com

Assistant State Attorney Jean-
Adel Williams
Fifteenth Judicial Circuit
jwilliams@sa15.org
lwilson@sa15.org
mseaton@sa15.org

The Honorable Pam Bondi
Attorney General of Florida
The Capitol PLO 1
Tallahassee, FL 32399
oag.civileservice@myfloridalegal.com
Via U.S. Mail

Assistant State Attorney Robert
Wayne Holmes
Eighteenth Judicial Circuit
wholmes@sa18.org

/s/ Richard Watson

RICHARD WATSON, ESQ.

Florida Bar No. 185138

rick@rwatsonandassociates.com

General Counsel and Chief Lobbyist

ABC of Florida

P.O. Box 10038

Tallahassee, FL 32301

850-222-0000

*Attorney for Associated Builders and
Contractors of Florida, Inc.*

CERTIFICATE OF COMPLIANCE

I FURTHER CERTIFY that this brief is typed in 14-point Times New Roman font, and otherwise complies with the font requirements of Fla. R. App. P. 9.100(l) and 9.210(a)(2).

/s/ Richard Watson

RICHARD WATSON, ESQ.

Florida Bar No. 185138

rick@rwatsonandassociates.com

General Counsel and Chief Lobbyist

ABC of Florida

P.O. Box 10038

Tallahassee, FL 32301

850-222-0000

*Attorney for Associated Builders and
Contractors of Florida, Inc.*