

Bond Case Briefs

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BOND VALIDATION - FLORIDA

Florida PACE Funding Agency v. Pinellas County

District Court of Appeal of Florida, Second District - March 27, 2024 - So.3d - 2024 WL 1288194

Florida PACE Funding Agency (FPFA) is a local government entity created under section 163.01(7), Florida Statutes (2010). It finances energy conservation and hurricane “hardening” improvements on residential and commercial properties.

FPFA entered into an interlocal agreement in 2019 to operate a non-residential PACE program within Pinellas County. FPFA agreed that, in addition to the limitations and requirements of applicable state and federal law, it must also comply with the limitations and requirements of the County PACE Ordinance.

In October 2022, a circuit court in Leon County validated a series of FPFA bonds worth up to \$5 billion. “Significantly, that same judgment includes language that seemingly permits FPFA to finance commercial and residential improvements statewide, without regard to municipal or county ordinances that regulate PACE local governments.”

“With the bond validation judgment in its pocket, FPFA sent a letter to the County on January 20, 2023, notifying the County that it was terminating the interlocal agreement effective March 21, 2023, and stating, ‘Henceforth, the [FPFA’s] program will be conducted independently, and not under the Agreement.’ FPFA asserted that the ‘[judicial validation] process clarified that the [FPFA] has independent authority to carry out its mission of offering PACE financing statewide, without requiring additional efforts from individual counties or cities.’

In the County’s subsequent suit, and without weighing in on the merits of FPFA’s claims, the District Court of Appeal upheld the interlocal agreement’s broad forum selection clause and denied FPFA’s motion for a change of venue.