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Clean Energy Loan Program Raises Questions In Florida Supreme Court.

The Florida Supreme Court is debating a 2010 clean energy measure allowing homeowners to fund improvements through special assessments. Challengers are attacking the process itself and the agency that administers it.

In 2010 the state Legislature passed the PACE act. The measure allows local governments to set up a program funding home improvements for clean energy or storm preparedness through the Florida Development Finance Corporation, or FDFC. But rather than extending money for the improvements in the form of a loan—which would follow the borrower, this program is funded through the special assessment process. FDFC attorney Raoul Cantero explains.

“This allows a homeowner—let’s use an example, to spend $20,000 on solar panels, and later, three years later, if the homeowner sells the house they’re not responsible for that $20,000. It stays with the house, so homeowners are more comfortable making these kinds of improvements,” Cantero says.

The idea is that homes that can better withstand a storm or place a lighter burden on the power grid provide benefits to the entire community. So to encourage homeowners to make those improvements, liability is tied to the property, and repayment is made through an increase tacked on to the homeowner’s property tax.

Justice Fred Lewis says the system could provide an important tool for improving blighted areas.

“You know I could look at this, and I could say Detroit and some of the blighted cities, this could be a way that they could come right back,” Lewis says

But he’s also skeptical of employing special assessments, which are primarily used for public improvements, to fund projects for private homes.

“You know just because somebody puts a name on something, you know as well as I do you can call it anything,” Lewis says. “I have never seen a case where it is benefits to an individual home that are being made like a home improvement loans, and it is qualified as a special assessment.”

Those assessments have the Florida Bankers Association upset. While the program looks an awful lot like a loan, it’s treated differently in the event of a foreclosure, with repayment of the tax assessment taking priority over the mortgage. Association attorney Ceci Berman says this violates the state constitution.

“And we know that under Florida law that it is an immediate contract impairment when you supersede a lien position,” Berman says, “I meant that’s been in the law for many years.”

The FDFC came up again in the next case Justices heard Thursday; this time the complaint focused on bonding. The money homeowners use for their improvements has to come from somewhere, and

Florida’s program raises funds by selling municipal bonds. But attorney James Dinkins, argues only local governments can issue bonds—not the state-backed FDFC.

“The reason that these bonds are not valid is not because of any infirmity in section 163.08,” Dinkins says, “but instead because Florida Development Finance Corporation is simply not a local government that’s authorized to impose these assessments, to enter into financing agreements as is specified in that statute.”

“They didn’t follow the statute,” Dinkins concludes, “therefore the bonds are not valid.”

But the lawyer for the finance corporation says it simply administers the program on the municipality’s behalf.

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