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Kramer Levin: Florida Open for Clean Energy Financing After Court Removes Barrier to PACE Programs.

In an Oct. 15 opinion, the Florida Supreme Court rejected a challenge to property-assessed clean energy (“PACE”) programs, which provide upfront financing to residential and commercial property owners that allows them to use green energy technology to improve their properties. The decision continues the trend of an increasingly friendly environment for clean energy producers and providers — as well as the investment funds that back them.

The decision is a victory for both the renewable energy industry and municipalities in Florida, as it should help expand the use of such programs across the state. Residential PACE programs — which surpassed their commercial counterparts in 2014 — represent a tremendous growth opportunity for financing activity. The ruling confirms Florida as the 30th state in the U.S. to authorize PACE programs, and the state could become the second-largest residential PACE market in the country, behind California. While some areas, including Miami-Dade County, already allowed PACE programs, Broward County and other jurisdictions had suspended implementation of local programs due to the uncertainty caused by the court challenge. In conjunction with the current political and regulatory focus on increasing the use of renewable energy, opportunities in this area are likely to increase now that the court has removed a barrier.

California has led the way on PACE projects to this point. Program administrators retained by counties and other municipal entities have successfully placed a series of rated securitizations of PACE assets. Leading the way has been the HERO program of Renovate America, which has issued five deals in its program. In July, Ygrene Energy Fund also announced a \$150 million private securitization transaction to help fund 6,210 energy and water conservation projects in partnership with local municipalities.

In its decision, the Florida Supreme Court ruled against the Florida Bankers Association, saying the group did not have standing to fight the program. The bankers’ group — echoing concerns expressed by federal housing regulators — had argued that PACE loans could negatively affect mortgages should they be paid back before mortgages.

The Florida decision was significant for the future of residential PACE programs in Florida, where they have previously been used only on a limited basis. Combined with the Obama administration’s Clean Power Plan Rule, announced in August, these decisions further contribute to market conditions that are increasingly hospitable to investments in renewable energy projects

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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