

CALIFORNIA ENERGY COMMISSION

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SACRAMENTO, CA 95814-5512
www.energy.ca.gov



October 14, 2010

Christopher D. Whyte
Steve DeBaun
Jeffrey Dunn
Best, Best & Krieger LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

Re: Western Riverside Council of Governments v. California Energy Commission

Counsel:

The California Energy Commission has just discovered the attached documents demonstrating that the Executive Committee of the Western Riverside Council of Governments (WRCOG) was informed by its own staff that:

"[D]espite PACE's great promise, the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency (OCC) on July 6th issued statements that immediately forced existing PACE programs to halt operations and froze the development of dozens of PACE programs nationwide."

"As a result, residential PACE financing cannot move forward at this time."

"Because of the [Fannie and Freddie] notification, the process and schedule [of WRCOG's Program] are now held up for an undetermined amount of time for the residential side of the Program."

"However, if Freddie Mac and Fannie Mae follow through . . . the action would effectively stop WRCOG's Program".

"WRCOG's . . . Program . . . hinge[s] on the fact that [PACE] loans must be superior to mortgage loans, or identify some other loan guarantee process to allow for . . . these loans to work."

"The California Energy Commission adopted a resolution to cancel Program Opportunity Notice (PON) No. 400-09-401 (Municipal Financing Program), and Notice of Proposed Awards, in response to direction of the United States Department of Energy (DOE)."

(WRCOG Staff Report supporting WRCOG Resolution No. 02-11: A Resolution of the Western Riverside Council of Governments in Support of Immediate Congressional

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Action to Authorize Legislation Allowing Property Assessed Clean Energy Programs, and in support of S. 3642, the PACE Assessment Protection Act of 2010.)

This information was specifically called to the attention of your Executive Committee by WRCOG Program Manager Barbara Spoonhour during its business meeting on September 13, 2010. (See Western Riverside Council of Governments, Executive Committee, Agenda for September 13, 2010, 2:00 p.m.) We note that the agenda indicates that Ms. Haviva Shane of your office was present at the September 13th meeting, and thus the law firm of Best, Best & Krieger appears to have been aware of the status of WRCOG's own PACE program, and PACE programs nationwide.

WRCOG's suspension of its own PACE program, based on the actions of the FHFA, is completely inconsistent with WRCOG's position in and pursuit of the pending litigation, including but not limited to, its claims that the Energy Commission's identical actions, based on the same intervening circumstances, violated the court's order. We are disturbed that you have not submitted this information to the superior court or to us. Moreover in the face of WRCOG's staff's acknowledgment that our actions were at the direction of United States Department of Energy, your contrary allegations to the court are extremely troubling.

In view of the above, your actions of the last several days, and your threats on behalf of WRCOG over the last several months to this Commission are wholly improper. We fail to understand why your client would jeopardize the State of California's (particularly local governments') use of these funds to ease some of the burdens of the oppressive recession plaguing this State. That WRCOG would do so on the basis of the implied claim that WRCOG could pursue the PACE program that it proposed, knowing that it could not, is incomprehensible.

Therefore, on behalf of the California Energy Commission, I hereby demand that you confirm in writing not later than 9:00 a.m. tomorrow morning that you will file papers withdrawing your application for a restraining order, your application for an order to show cause, and that you will file a dismissal with prejudice of Case No. RIC 10005849. We would expect confirmation that this has actually been accomplished not later than noon tomorrow.

I look forward to your prompt reply.

Sincerely,



MICHAEL J. LEVY
Chief Counsel

cc: Michael Witmer



Western Riverside Council of Governments

Executive Committee

AGENDA

**Monday, September 13, 2010
2:00 p.m.**

**County of Riverside
Administrative Center
4080 Lemon Street
1st Floor Board Chambers
Riverside, CA 92501**

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if special assistance is needed to participate in the WRCOG Executive Committee meeting, please contact WRCOG at (951) 955-8320. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting. In compliance with Government Code Section 54957.5, agenda materials distributed within 72 hours prior to the meeting which are public records relating to an open session agenda item will be available for inspection by members of the public prior to the meeting at 4080 Lemon Street, 3rd Floor, Riverside, CA, 92501.

- 1. CALL TO ORDER (Kelly Bennett, Chair)**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. SPECIAL RECOGNITION – Supervisor Marion Ashley**
- 5. PUBLIC COMMENTS**

At this time members of the public can address the WRCOG Executive Committee regarding any items with the subject matter jurisdiction of the Committee that are not separately listed on this agenda. Members of the public will have an opportunity to speak on agenda items at the time the item is called for discussion. No action may be taken on items not listed on the agenda unless authorized by law. Whenever possible, lengthy testimony should be presented to the Committee in writing and only pertinent points presented orally.

- 6. CONSENT CALENDAR**

All items listed under the Consent Calendar are considered to be routine and may be enacted by one motion. Prior to the motion to consider any action by the Committee, any public comments on any of the Consent Items will be heard. There will be no separate action unless members of the Committee request specific items be removed from the Consent Calendar.

- A. **Summary Minutes from the August 2, 2010, WRCOG Executive Committee meeting are available for consideration.** P. 1
- Requested Action:** 1. *Approve Summary Minutes from the August 2, 2010, WRCOG Executive Committee meeting.*
- B. **Strategic Growth Council Proposition 84 Grant Application** **Danielle Coats** P. 9
- Requested Action:** 1. *Adopt WRCOG Resolution 03-11: A Resolution of the Executive Committee of the Western Riverside Council of Governments (WRCOG) approving the application for grant funds for the Sustainable Communities Planning Grant and Incentives Program under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84).*
- C. **Western Riverside Energy Leader Partnership Update** **Barbara Spoonhour** P. 13
- Requested Action:** 1. *Receive and file.*
- D. **AB 811 Regional Program Update** **Barbara Spoonhour** P. 55
- Requested Actions:** 1. *Adopt WRCOG Resolution Number 02-11: A Resolution of the Western Riverside Council of Governments in Support of Immediate Congressional Action to Authorize Legislation Allowing Property Assessed Clean Energy Programs.*
2. *Support S. 3642: The PACE Assessment Protection Act of 2010.*
- E. **University of California, Riverside, Federal Work-Study Program for the 2010/2011 Academic Year** **Barbara Spoonhour** P. 65
- Requested Action:** 1. *Authorize the WRCOG Executive Director to enter into an agreement with the University of California, Riverside, for the Federal Work-Study Program for the 2010/2011 academic year.*
- F. **Grant Activities Update** **Ruthanne Taylor Berger** P. 71
- Requested Actions:** 1. *Authorize WRCOG staff to further develop projects for the SCAG Compass Blueprint grant and submit requests for the following: Context Sensitive Design, Housing and Urban Development Grant Solicitation Planning, Transportation Demand Management / Transportation Systems Management Planning, General Plan Energy Element Template, and Jefferson Avenue Corridor Study Enhancements.*
2. *Authorize WRCOG staff to continue to work with member jurisdictions to develop and submit a proposal for SCE's Local Government Strategic Plan Strategies Solicitation.*
- G. **TUMF Program Activities Update** **Ruthanne Taylor Berger** P. 75
- Requested Action:** 1. *Authorize the WRCOG Executive Director to execute a reimbursement agreement with the City of Murrieta for the California Oaks Road/I-15 Interchange Improvements Project.*

1. CALL TO ORDER

The meeting of the WRCOG Executive Committee, as well as the consolidated agenda of the WRCOG Supporting Foundation, was called to order at 2:03 p.m. by Chair Kelly Bennett, in the Riverside County Administrative Center, 1st Floor Board Chambers.

2. ROLL CALL

Members Present:

John Machisic, City of Banning
Jim Hyatt, City of Calimesa
Karen Spiegel, City of Corona (3:08 p.m. departure)
Robin Lowe, City of Hemet
Darcy Kuenzi, City of Menifee (3:15 p.m. departure)
Robin Hastings, Vice-Chair, City of Moreno Valley
Kelly Bennett, Chair, City of Murrieta
Kathy Azevedo, City of Norco
Rita Rogers, City of Perris
Ron Loveridge, City of Riverside (2:06 p.m. arrival)
Steve DiMemmo, City of San Jacinto
Ron Roberts, City of Temecula
Scott Farnam, City of Wildomar
Bob Buster, Second Vice-Chair, County of Riverside, Dist. 1
John Tavaglione, County of Riverside, Dist. 2 (2:20 p.m. arrival; 3:09 p.m. departure)
Jeff Stone, County of Riverside, Dist. 3 (3:14 p.m. departure)
Marion Ashley, County of Riverside, Dist. 5
Phil Paule, Eastern Municipal Water District (2:08 p.m. arrival)
S.R. Al Lopez, Western Municipal Water District
Rick Dudley, WRCOG TAC Chair

Staff:

Ruthanne Taylor Berger, Deputy Executive Director
Haviva Shane, Legal Counsel
Barbara Spoonhour, Program Manager
Danielle Coats, Program Manager
Donna Dean, Program Manager
Jennifer DiCiano, Program Manager
Kevin Viera, Program Manager
Alex Serena, Staff Analyst
Philippe Clary, Intern
Lupe Lotman, Executive Assistant
Janis Leonard, Executive Assistant

3. PLEDGE OF ALLEGIANCE

Councilmember Robin Hastings, City of Moreno Valley, led the members and guests in the Pledge of Allegiance.



Western Riverside Council of Governments Executive Committee

Staff Report

Subject: AB 811 Regional Program Update

Contact: Barbara Spoonhour, Program Manager (spoonhour@wrcog.cog.ca.us), (951) 955-8313

Date: September 13, 2010

Requested Actions:

1. Adopt WRCOG Resolution Number 02-11: A Resolution of the Western Riverside Council of Governments in Support of Immediate Congressional Action to Authorize Legislation Allowing Property Assessed Clean Energy Programs.
2. Support S. 3642: The PACE Assessment Protection Act of 2010.

Background: AB 811, chaptered in July 2008, authorizes local governments to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects for home and small business owners. Pursuant to direction from the WRCOG Executive Committee, WRCOG has established a regional program to administer on behalf of participating jurisdictions in Western Riverside County.

Program Update: On May 5, 2010, Fannie Mae and Freddie Mac issued Lender Letters that stated "PACE (Property Assessed Clean Energy) loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage." Fannie Mae and Freddie Mac are regulated by the Federal Housing Finance Agency (FHFA). Subsequent to the housing crisis, both agencies were placed in federal conservatorship under FHFA and the U.S. Treasury.

While the letters did not direct lenders or servicers to take action, this statement indicated that PACE participants could be in violation of their existing mortgage contracts. These statements attracted significant attention including that of Senators, Members of Congress, Governors, and others.

On Friday, July 2, 2010, the House Committee on Energy and Commerce Chair Henry Waxman and Committee on Financial Services Chair Barney Frank issued a letter to Secretaries Geithner and Chu and Director De Marco of FHFA requesting clarification and support for PACE programs across the country.

On July 6, 2010, FHFA posted a statement reaffirming that a senior PACE lien is in violation of any Fannie Mae or Freddie Mac mortgage contract. As a result, residential PACE financing cannot move forward at this time. A nationwide PACE coalition is working to take legislative action that will correct this issue. The coalition has asked all jurisdictions to sign letters to their congressional representatives and pass resolutions in support of PACE. A copy of the support resolution is provided for members' review, along with a PACE Fact Sheet.

In addition, on July 6, 2010, the Office of the Comptroller of the Currency (OCC) issued guidance to alert national banks to concerns and regulatory expectations regarding certain state and local lending programs for energy retrofitting of residential and commercial properties, frequently termed a PACE Program. According to the OCC, "this lien infringement raises significant safety and soundness concerns that mortgage lenders and investors must consider and more generally, national banks should ascertain if such programs exist in

jurisdictions where they do business, determine whether those programs alter banks' lien positions, and carefully consider the programs' impact on both banks' current mortgage portfolios and ongoing mortgage lending activities.”

Resolving this matter is critical to WRCOG's Program and similar programs being pursued throughout the United States. During the past several months, WRCOG has been actively pursuing funding – outside of federal assistance for the Program – through the creation of a financing district that would sell bonds on the open market for properties participating in the Program. On June 7, 2010, WRCOG held its Public Hearing to establish the Program District; the intent was to commence the Program in August 2010 and conduct an initial bond sale in October 2010. Because of the Freddie Mac and Fannie Mae notification, the process and schedule are now held up for an undetermined amount of time for the residential side of the Program.

Next Steps: A trip to Washington, D.C., is being contemplated for late September 2010 to meet with each legislator's office to gain support for next year's appropriation request, HR 5766, and S. 3642. This trip would also include scheduling meetings with staff from the Appropriations Committee, Department of Energy, Subcommittee on Energy and Water Development, and Department of Urban Housing Department.

S. 3642: Senator Boxer (D-CA) introduced The PACE Assessment Protection Act of 2010. This is the Senate's version of House Bill 5766, which explicitly directs the FHFA not to block PACE from moving forward and directing all federal regulators not to block commercial building PACE programs. An analysis of the bill is provided for review and WRCOG staff is requesting that members of the WRCOG Executive Committee take a support position for this bill.

Prior WRCOG Action:

September 8, 2010: The WRCOG Administration & Finance Committee is expected to provide direction.

WRCOG Fiscal Impact:

None.

Attachments:

1. WRCOG Resolution 02-11: A Resolution of the Western Riverside Council of Governments in Support of Immediate Congressional Action to Authorize Legislation Allowing Property Assessed Clean Energy Programs.
2. Fannie Mae and Freddie Mac Timeline.
3. PACE Finance Summary Sheet.
4. Bill Analysis: S. 3642 (Boxer).



Western Riverside Council of Governments

County of Riverside • City of Banning • City of Beaumont • City of Calimesa • City of Canyon Lake • City of Corona • City of Hemet • City of Lake Elsinore
City of Menifee • City of Moreno Valley • City of Murrieta • City of Norco • City of Perris • City of Riverside • City of San Jacinto • City of Temecula
City of Wildomar • Eastern Municipal Water District • Western Municipal Water District

RESOLUTION NUMBER 02-11

A RESOLUTION OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS IN SUPPORT OF IMMEDIATE CONGRESSIONAL ACTION TO AUTHORIZE LEGISLATION ALLOWING PROPERTY ASSESSED CLEAN ENERGY PROGRAMS

WHEREAS, utility bills represent a major cost of operating costs for home and business owners;

WHEREAS, persistent unemployment, particularly in the construction industry, continues to burden our families and communities;

WHEREAS, energy security and reliance on fossil fuels continue to threaten public health and the environment;

WHEREAS, residential and commercial buildings consume nearly 40% of all electricity and are responsible for 40% of U.S. annual carbon dioxide emissions;

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can save energy, cut utility bills, create thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas emissions;

WHEREAS, the upfront cost and potentially long payback periods prevent property owners from making otherwise cost-effective clean energy improvements;

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative local government solution to help property owners finance energy efficiency and renewable energy improvements – such as energy efficient boilers, upgraded insulation, new windows, solar installations, etc. – to their homes and businesses;

WHEREAS, twenty-two states have passed laws enabling local governments to develop PACE programs.

WHEREAS, White House and the U.S. Department of Energy strongly support PACE, have dedicated \$150 million to develop local PACE programs and issued guidelines to ensure that PACE programs meet safety and soundness requirements and adequately protect both bond buyers and property owners; and,

WHEREAS, despite PACE's great promise, the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency (OCC) on July 6th issued statements that immediately forced existing PACE programs to halt operations and froze the development of dozens of PACE programs nationwide.

NOW, THEREFORE, BE IT RESOLVED that the Executive Committee of the Western Riverside Council of Governments does hereby urge the California congressional delegation to support legislation that clearly guarantees local governments the right to assess special taxes for clean energy programs and restore the promise of PACE.

PASSED AND ADOPTED at a Meeting of the Executive Committee of the Western Riverside Council of Governments held this 13th day of September, 2010.

Kelly Bennett, Chair
WRCOG Executive Committee

AYES: _____

NOES: _____

ABSENT: _____

Rick Bishop, Secretary
WRCOG Executive Committee

ABSTAIN: _____

Fannie Mae and Freddie Mac Timeline

The following is a timeline of actions being taken across the nation in reference to the Industry Letter.

July 28, 2010 – The California Energy Commission adopted a resolution to cancel Program Opportunity Notice (PON) No. 400-09-401 (Municipal Financing Program), and Notice of Proposed Awards, in response to direction of the United States Department of Energy (DOE).

- This PON is where WRCOG has initiated legal action against the State Department of General Services (DGS) and the California Energy Commission (CEC) regarding the CEC's disqualification of a grant proposal submitted by WRCOG in December 2009.

July 15, 2010 – Congressman Thompson introduced H.R. 5766 to ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements.

July 14, 2010 – State of California filed suit against the FHFA, Fannie Mae and Freddie Mac.

July 13, 2010 – The Sonoma County Board of Supervisors strongly re-affirmed the County's commitment to the innovative Sonoma County Energy Independence Program (SCEIP) at the Board meeting and directed staff to keep the program open for business while Congress grapples with recent regulatory hurdles. The SCEIP and other similar Property Assessed Clean Energy Programs (PACE) across the country have been called into question by recent regulatory action as to whether the program uses loans or assessments as the prime tool for financing.

July 12, 2010 – Town of Babaylon, New York filed suit against the FHFA, Fannie Mae and Freddie Mac.

July 8, 2010 – City of Murrieta sends letters to Senator Feinstein and Congresswoman Bono Mac to have them contact and assist with the FHFA's findings.

July 6, 2010 – "Sonoma County has halted its PACE program, pending the agency's clarification on how its new policy will affect current and potential future participants," said Kathy LaRoque, the county's deputy counsel.

July 6, 2010 – The FHFA released a statement to Freddie Mac and Fannie Mae that kills any chance of new property owners to participate in a PACE or AB 811-type Program. The FHFA directs lenders to tighten debt-to-income ratios for borrowers to account for possible future PACE loans and ordered lenders in areas where the Programs are offered to lower the maximum all buyers can borrow to take into account the availability of PACE loans. This additional direction not only penalizes property owners for trying to take a proactive role in reducing electricity demands and utility bills, but penalizes a community that offers these types of Programs to its residents.

July 6, 2010 – The Office of the Comptroller of the Currency (OCC) issued guidance to alert national banks to concerns and regulatory expectations regarding certain state and local lending programs for energy retrofitting of residential and commercial properties, frequently termed a PACE program. According to the OCC, "this lien infringement raises significant safety and soundness concerns that mortgage lenders and investors must consider and more generally, national banks should ascertain if such programs exist in jurisdictions where they do business, determine whether those programs alter banks' lien positions, and carefully consider the programs' impact on both banks' current mortgage portfolios and ongoing mortgage lending activities."

June 25, 2010 – WRCOG sent letters to Congressional and Senate members to contact the FHFA to have them rescind the Industry Letters.

June 2010 – San Francisco halted the residential portion of its \$150 million PACE financing program after Fannie and Freddie sent letters on May 5 warning that PACE participants could be in violation of mortgage lending rules.

May 5, 2010 – Industry letter issued from Fannie Mae and Freddie Mac stating that energy-related liens may not be senior to any mortgage delivered. It is WRCOG's understanding that the letters provided by Freddie Mac and Fannie Mae were driven by the FHFA and their intention was not to kill any PACE or AB 811-type Programs. However, if Freddie Mac and Fannie Mae follow through as currently indicated in the industry letter, the action would effectively stop WRCOG's Program and other Programs being developed across the nation.

PACE Finance Summary Sheet

Energy Efficiency & Renewable Energy Financing for Property Owners

What is PACE?

Property Assessed Clean Energy (PACE) is a local government program that allows property owners to finance energy efficiency and renewable energy improvements using low-interest bonds that generally have no recourse to the municipality. Interested residential and commercial property owners opt-in to receive long term financing (up to 20 years) for these improvements, which is repaid through an assessment on their property taxes. This arrangement spreads the cost of clean energy improvements – such as energy efficient boilers, upgraded insulation, new windows, solar installations, etc – over the expected life of the measure and allows for the repayment obligation to automatically transfer to the next property owner if the property is sold. The following states are currently PACE enabled: CA, CO, FL, GA, IL, LA, ME, MD, MN, MO, NV, NH, NM, NY, NC, OH, OK, OR, TX, VT, VA, WI

Why is PACE so innovative?

High upfront cost is the single largest barrier to increased adoption of energy efficiency and small-scale renewable energy. The second barrier is the uncertainty as to whether property buyers will pay more for efficiency improved properties. PACE removes the upfront cost barrier and removes the uncertainty barrier as the new buyer inherits the annual tax surcharges.

Historical precedent

PACE is a type of land-secured financing district, which has a 100+ year history in the U.S. to pay for improvements in the public interest. Over 37,000 land secured districts already exist and are a familiar tool of municipal finance. They are used to finance projects which serve a public purpose, including street paving, parks, open space, water and sewer systems, street lighting, and seismic strengthening, among others. [Link: Paul Hastings legal opinion.](#)

Benefits to Existing Lenders

Lower Default Risk – **Owner's cash flow position** is improved as PACE programs are designed to have annual energy savings exceed the annual PACE assessment payments. Owner is now in a better position to make mortgage payments.

Better Loan-to-Value Ratio – Since PACE improvements have a positive net **present value**, they increase the lender's collateral which improves the loan-to-value ratio.

Best Practice Framework Adopted - **The White House PACE Best Practice Framework** and the **Department of Energy Guidelines** are now being incorporated into PACE programs nationwide to help ensure that PACE programs benefit existing lenders.

PACE Senior lien status is immaterial (less than \$200 per home) & more than offset by value enhancement – PACE assessments are treated as senior liens which is critical for the success of the programs but the seniority amount is immaterial due to the per property size limits of PACE finance and other best practice measures ([Link to NY Times Article & PACE Lien Immateriality.](#))

What are the benefits to participating property owners?

No Upfront Cost – Removes the upfront cost barrier of energy efficiency and renewable energy improvements. Most programs only charge a small fee to property owners.

Improved Cash Flow – **Owner's cash flow position** is improved as PACE programs are designed to have annual energy savings exceed the annual PACE assessment payments.

Less Investment Risk - **Removes the uncertainty of recovering the cost of improvements if the property is sold, because the financing runs with the property via the tax assessment.**

Benefits to Municipalities

Local Job Growth – PACE has the ability to stimulate local job creation through the installation of efficiency and energy improvements. It is estimated that for every \$1mm spent on clean energy improvements, 10 jobs are created. For every 100,000 homes that are retrofitted, with an average expenditure of \$10,000, **more than 10,000 jobs** would be created.

No Credit or General Obligation Risk – PACE bonds are typically not general obligation or appropriation bonds, so the **municipality's credit** is not placed on the line. The obligation resides exclusively with the property owner.

Opt-in Assessments – **The assessments are only placed on those properties where the owner voluntarily "opts-in" to the financing program.**

Meet Carbon Reduction Goals – Counties, Cities, Towns and Villages can use this tool to move quickly toward achieving their carbon reduction and energy independence goals.

(Click here for [responses to regulator claims & www.pacenow.org](#)).

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BILL ANALYSIS

Date: September 2, 2010

Bill No: S. 3642 (Boxer, D-California)

Subject: The Property Assessed Clean Energy (PACE) Assessment Protection Act of 2010

Introduced: July 22, 2010

Bill Status: Referred to Subcommittee on Senate Banking, Housing, and Urban Affairs.

Summary: S 3642 would ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements.

Analysis: In recent months the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) have issued industry letters stating that property assessed clean energy loans, or PACE loans, "may not be senior to any Mortgage delivered to Freddie Mac. Seller/Serviceers should determine whether a state or locality in which they originate mortgages has an energy loan program, and whether a first priority lien is permitted."

PACE loans are the loans that would be available through the WRCOG AB 811 program. If allowed to continue, Freddie Mac and Fannie Mae's action would essentially stop all residential AB 811-type energy efficiency retrofit funding programs that are currently gaining traction throughout the nation. S 3642 would provide a legislative fix to this situation by requiring Fannie Mae and Freddie Mac to facilitate the use of PACE programs to finance approved energy efficiency upgrades.

Specifically, this bill:

- States that within 60 days following the passage of S 3642, Fannie Mae and Freddie Mac shall adopt underwriting standards that are consistent with the Guidelines for Pilot PACE Financing Programs which were issued on May 7, 2010, by the Department of Energy;
- Declares that liens or other property obligations that secure property taxes or assessments under a PACE program and are consistent with the standards shall be considered in compliance with the Uniform Instruments of Fannie Mae and Freddie Mac and shall not constitute a default on an existing mortgage or trigger the exercise of lender's remedies for a property with such a lien;
- Identifies that for properties which meet the underwriting criteria of Fannie Mae and Freddie Mac without consideration of the PACE program lien, Fannie Mae and Freddie Mac shall not require repayment of a PACE program tax or assessment in order for a property owner to finance, refinance, or transfer the property;
- States that the underwriting standards shall provide that in the event that a tax or assessment under a PACE program is delinquent, only the unpaid delinquent amount (along with the applicable penalties, interests, and costs) will be subject to foreclosure and not the entire amount; and
- Declares that Fannie Mae and Freddie Mac shall not discriminate against communities implementing or participating in a PACE program, including by

prohibiting lending within the community or requiring more restrictive underwriting criteria for properties within the community.

Comments: Consistency with WRCOG Legislative Platform:
S 3642 is addressed in WRCOG's 2010 Legislative Priorities in that WRCOG "Supports funding for the initiation and management of AB 811/AB 474 loan repayment programs for energy efficiency upgrades and water conservation improvements". While S 3642 does not specifically address funding for PACE programs if it does not pass, then PACE program implementation will halt and the need for funding will not be necessary.

WRCOG's Energy Efficiency Retrofit Program, and all other AB 811-type programs, hinge on the fact that property assessed clean energy loans must be superior to mortgage loans, or identify some other loan guarantee process to allow for the financing mechanism behind these loans to work. When Fannie Mae and Freddie Mac took the position to deny the PACE loans' priority they ultimately conflicted with the intentions of the White House, considering that the Obama administration has currently allocated \$150 million in stimulus money to support PACE programs and another \$2 billion has recently been identified for loan guarantees for solar energy programs. Jurisdictions and agencies that have already received stimulus funding are scrambling to retool their programs, and residents who have taken advantage of PACE loans may experience a difficult time in refinancing their mortgage due to this decision.

In a single action, Fannie Mae and Freddie Mac have halted months, and in some cases, years of work on producing programs that successfully encourage energy efficiency retrofits. While other financing mechanisms still exist for such retrofits, the PACE programs hold promise for increasing the numbers of residents that are able to implement energy efficiency retrofits, especially on older, less efficient homes.

WRCOG staff recommends a position of Support be adopted for S 3642.

Recommended Position: Support

SUPPORT: No support listed as of yet. However, as of July 22nd, there are 5 co-sponsors listed.

OPPOSITION: No opposition listed as of yet.

WATCH: None.

WRCOG staff contact: Danielle Coats, (951) 955-8432, coats@wrcoq.coq.ca.us.