



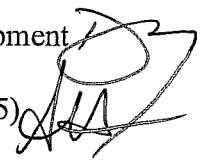
BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: HCD
Department No.: 055
For Agenda Of: 8/10/10
Placement: Administrative
Estimated Tme: 5 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department David Matson, Director, Housing and Community Development
Director(s)
Contact Info: Angie Hacker, emPowerSBC Program Manager (568-3515)
SUBJECT: Support for H.R. 5766 and S. 3642 Relating to Property Assessed Clean Energy Programs



County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- a. Adopt a resolution of support for H.R. 5766 and S. 3642 relating to Property Assessed Clean Energy programs and related matters.

Summary Text:

This item is being placed on the Board agenda to consider the adoption of a resolution of support for H.R. 5766 (Attachment A) to ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of Property Assessed Clean Energy programs (PACE) to finance the installation of renewable energy and energy efficiency improvements. This bill, and an identical bill introduced in the Senate on July 22, 2010 (S. 3642), follow a statement recently issued by the Federal Housing Finance Agency (FHFA), which threatens to significantly weaken existing and developing PACE programs throughout the country, including the County's recently adopted emPowerSBC. In response, many local governments and PACE partners across the nation are calling for immediate congressional action to enact legislation resolving the federal policy debate and allowing PACE to continue.

Background:

On July 6, 2010, federal lending regulators, including the Federal Housing Finance Agency (FHFA), released communication to banks (Attachment B) across the nation outlining concerns regarding Property Assessed Clean Energy (PACE) programs like emPowerSBC. The FHFA letter suggests that

Support for H.R. 5766 and S. 3642

Page 2 of 3

PACE programs with first liens run contrary to Fannie Mae and Freddie Mac uniform mortgage contracts. The FHFA directive outlined requirements for existing program participants and put in place new restrictions that have the potential to affect lending standards within any jurisdiction that have a PACE program.

Surprisingly, this regulatory concern is in direct opposition to actions by the US Department of Energy (DOE) and the Obama Administration, which have directly provided over \$150 million in economic stimulus funds to support PACE programs across the nation. In fact, Santa Barbara County was recently awarded a \$2.4 million competitive grant from DOE to implement emPowerSBC, as well as a \$773,000 grant from the California Energy Commission.

Over the course of the last several weeks, strong opposition to FHFA's action has been expressed by the Governors and members of both the House and Senate from many of the 23 states that have already adopted PACE legislation. In addition, a number of lawsuits have been filed across the country, including the State of California, the Sierra Club, the city of Babylon, New York, and Sonoma County, California. While most PACE programs have temporarily been put on hold, Sonoma County and Babylon, New York have chosen to continue operating their programs despite the communications from FHFA.

On July 13, in a prudent effort to protect local property owners and potential new program participants, the County of Santa Barbara Board of Supervisors provided direction to staff (Attachment C) to wait to accept and approve applications for emPowerSBC until federal issues are resolved. County staff continues to prepare for full program implementation while simultaneously assessing the policy implications of federal regulatory issues. County staff has been actively involved, per Board direction, with leading PACE supporters across the nation at the local, state and federal level. The County's contacts in Washington have continued to provide pertinent information to members of Congress and are working to pursue a lasting resolution to this important policy debate.

Congressional Action

On July 15, the House Representative Mike Thompson introduced a bill, H.R. 5766 (Attachment D), 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." This bill is currently in the Finance Committee and is expected to be heard in the next several weeks. An identical bill, S. 3642 ("PACE Assessment Protection Act of 2010"), was introduced by Senator Barbara Boxer on July 22, 2010 and has been referred to the Committee on Banking Housing, and Urban Affairs.

If passed, this legislation would direct that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to adopt underwriting standards that are consistent with the Guidelines for Pilot PACE Finance Programs issued on May 7, 2010 by the U.S. Department of Energy¹. H.R. 5766 would also direct that liens or other property obligations that secure property taxes (or assessments under a PACE program and are consistent with such standards) will be considered to fully comply with the Uniform Instruments of such Association and Corporation and will not constitute a default on an existing mortgage or trigger the exercise of lender's remedies for a property with such a

¹ Notably, the County's emPowerSBC program already contains strong underwriting criteria and was designed simultaneously with the development of these federal guidelines to ensure compliance.

Support for H.R. 5766 and S. 3642

Page 3 of 3

lien. Therefore, if a property meets the underwriting criteria of the Association and the Corporation without consideration of the PACE program lien, the Association and the Corporation will not require repayment of a PACE program tax or assessment in order for the property owner to finance, refinance, or transfer the property.

This legislation effectively allows emPowerSBC to stay on track towards successful implementation, using the financing structure planned for over the course of the last 18 months of program design. Given that emPowerSBC is expected to provide significant benefits to participating property owners throughout the County, as well as larger benefits to the local economy and environment, staff recommends adopting this resolution of support.

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Narrative: N/A

Staffing Impacts:

Legal Positions:

NA

FTEs:

NA

Special Instructions:

Please submit to Sonia Thompson in the CEO's office to assist with communicating the Board of Supervisors' position to the County of Santa Barbara's federal legislative delegation and to the leadership of the relevant congressional committees.

Attachments:

- A. Resolution of Support for H.R. 5766 and S. 3642
- B. Federal Housing Finance Agency (FHFA) Statement
- C. County of Santa Barbara resolution addressing the concerns of the Federal Housing Finance Agency relating to emPowerSBC financing for residential properties.
- D. H.R. 5766

Authored by:

Angie Hacker, emPowerSBC Program Manager, Housing and Community Development

CC:

Robert Geis, Auditor-Controller

Bernice James, Treasurer-Tax Collector

Attachment A

Resolution of Support for H.R. 5766 and S. 3642

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA**

RESOLUTION NO. _____

**RESOLUTION OF SUPPORT FOR H.R. 5766 AND S. 3642 RELATING TO
PROPERTY ASSESSED CLEAN ENERGY PROGRAMS AND RELATED
MATTERS**

WHEREAS, residential and commercial buildings consume a significant amount of energy and water; and,

WHEREAS, high upfront costs and potentially long payback periods prevent property owners from making otherwise cost-effective clean energy or water efficiency improvements; and,

WHEREAS, investments in energy efficiency, renewable energy and water efficiency improvements will create demand for work in the construction industry, helping address persistent unemployment or underemployment; and

WHEREAS, the County of Santa Barbara ("County") is authorized under Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to levy contractual assessments to finance the installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property ("Authorized Improvements"); and,

WHEREAS, Chapter 29 authorizes the County to enter into contractual assessments to finance the installation of Authorized Improvements; and,

WHEREAS, on March 16, 2010, pursuant to Resolution No. 10-068, the Board of Supervisors declared its intention to establish a contractual assessment program, pursuant to which the County would enter into contractual assessments to finance the installation of Authorized Improvements in the County; and

WHEREAS, on April 13, 2010, pursuant to Resolution No. 10-098, the Board of Supervisors established this contractual assessment program, known as emPowerSBC, enabling the County to finance energy and water conservation improvements for property owners throughout the County; and,

WHEREAS, all eight incorporated cities within the County boundary have also agreed to participate in emPowerSBC; and,

WHEREAS, emPowerSBC is forecasted to stimulate economic activity throughout the region, create jobs, lower utility bills, and deliver significant environmental benefits; and,

WHEREAS, twenty-three states have passed Property Assessed Clean Energy (PACE) laws enabling local governments to develop PACE programs like emPowerSBC; and,

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

WHEREAS, the County has been awarded a \$2.4 million competitive grant from the U.S. Department of Energy and a \$773,000 grant from the California Energy Commission to support implementation of emPowerSBC; 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 6, 2010 issued statements that threaten to significantly weaken existing PACE programs and effectively freeze the development of dozens of PACE programs nationwide; and,

WHEREAS, in response to the statements issued by FHFA and the OCC, Congressional Representative Thompson (Sonoma, CA) introduced H.R. 5766 to protect PACE programs across the nation and strengthen local governments' ability to implement innovative community enhancement programs like emPowerSBC; and,

WHEREAS, an identical bill, S. 3642 ("PACE Assessment Protection Act of 2010"), was introduced by Senator Barbara Boxer on July 22, 2010; and

WHEREAS, H.R. 5766 and S. 3642 direct that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall adopt underwriting standards that are consistent with the Guidelines for Pilot PACE Finance Programs issued on May 7, 2010 by the U.S. Department of Energy, and that liens or other property obligations that secure property taxes or assessments under a PACE program and are consistent with such standards shall be considered to comply with the Uniform Instruments of such Association and Corporation 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; and,

WHEREAS, H.R. 5766 and S. 3642 provide that with respect to a property that meets the underwriting criteria of the Association and the Corporation without consideration of the PACE program lien, the Association and the Corporation shall not require repayment of a PACE program tax or assessment in order for the property owner to finance, refinance, or transfer the property; and,

WHEREAS, H.R. 5766 and S. 3642 direct 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 and applicable penalties, interests and other costs will be subject to foreclosure, not the entire amount of the tax or assessment; and,

WHEREAS, H.R. 5766 and S. 3642 prohibit federal agencies and all entities chartered under Federal law from discriminating against communities implementing or participating in a PACE program by, for example, requiring more restrictive underwriting criteria for properties within the community.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED by the Board of Supervisors of the County of Santa Barbara as follows:

1. Recitals. The above recitals are true and correct.

2. Support of H.R. 5766 and S. 3642. The Board of Supervisors hereby supports H.R. 5766 and S. 3642 and directs staff to provide further support for H.R. 5766 and S. 3642 as necessary for the successful implementation of emPowerSBC. The Board of Supervisors also directs staff to communicate the Board of Supervisors' position to the County of Santa Barbara's federal legislative delegation and to the leadership of the relevant congressional committees.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Santa Barbara held on this 10th day of August, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

CHAIR, BOARD OF SUPERVISORS

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By: 
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

ROBERT GEIS
AUDITOR-CONTROLLER

By: 

Attachment B

Federal Housing Finance Agency (FHFA) Statement

FEDERAL HOUSING FINANCE AGENCY



STATEMENT

For Immediate Release
July 6, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

FHFA Statement on Certain Energy Retrofit Loan Programs

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.
2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
 - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
 - Ensuring that loan covenants require approval/consent for any PACE loan;
 - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
 - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.

Attachment C

County of Santa Barbara resolution addressing the concerns of the Federal Housing Finance Agency relating to emPowerSBC financing for residential properties.

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA**

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA
BARBARA ADDRESSING THE CONCERNS OF THE FEDERAL HOUSING FINANCE
AGENCY RELATING TO EMPOWERSBC FINANCING FOR RESIDENTIAL PROPERTIES**

WHEREAS, the County of Santa Barbara ("County") is authorized under Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to levy contractual assessments to finance the installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property ("Authorized Improvements"); and

WHEREAS, Chapter 29 authorizes the County to enter into contractual assessments to finance the installation of Authorized Improvements; and

WHEREAS, on April 13, 2010, pursuant to Resolution No. 10-098, the Board of Supervisors established the County's "Elective Municipal Programs to Optimize Water, Energy, and Renewables for Santa Barbara County" (the "emPowerSBC Program") within the boundaries of the County; and

WHEREAS, on July 6, 2010, the Federal Housing Finance Agency issued the Statement attached hereto as Exhibit A (the "Statement"); and

WHEREAS, as a result of the Statement and in order to avoid any adverse impact on residential property owners in the County as a result of the emPowerSBC Program, the Board of Supervisors wishes to declare that, as long as the Statement is in effect, the County will not accept applications for the emPowerSBC Program from residential properties or provide financing through the emPowerSBC Program to residential property owners in the County;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Barbara as follows:

1. Recitals. The above recitals are true and correct.
2. Conduct of emPowerSBC Program for Residential Properties. The Board of Supervisors hereby orders that, as long as the Statement is in effect, the County shall not accept applications for the emPowerSBC Program from residential properties in the County or provide financing through the emPowerSBC Program for residential properties in the County.

The Board of Supervisors hereby orders that, except as provided in the previous sentence, the emPowerSBC Program shall remain in full force and effect.

3. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Santa Barbara held on this 13th day of July, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

CHAIR, BOARD OF SUPERVISORS

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

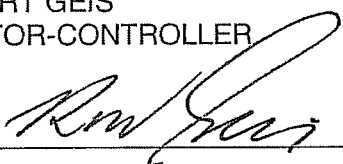
APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By:  _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

ROBERT GEIS
AUDITOR-CONTROLLER

By:  _____

Attachment D

H.R. 5766

.....
(Original Signature of Member)

111TH CONGRESS
2D SESSION

H. R.

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.

IN THE HOUSE OF REPRESENTATIVES

Mr. THOMPSON of California introduced the following bill; which was referred to the Committee on _____

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “The PACE Assessment
5 Protection Act of 2010”.

1 **SEC. 2. TREATMENT OF PACE PROGRAMS BY FANNIE MAE**
2 **AND FREDDIE MAC.**

3 (a) **ADOPTION OF UNDERWRITING STANDARDS.—**
4 Not later than the expiration of the 60-day period that
5 begins upon the date of the enactment of this Act, the
6 Federal National Mortgage Association and the Federal
7 Home Loan Mortgage Corporation shall adopt under-
8 writing standards that are consistent with the Guidelines
9 for Pilot PACE Financing Programs issued on May 7,
10 2010, by the Department of Energy. Liens or other prop-
11 erty obligations that secure property taxes or assessments
12 under a PACE program and are consistent with such
13 standards shall be considered to comply with the Uniform
14 Instruments of such Association and Corporation and
15 shall not constitute a default on an existing mortgage or
16 trigger the exercise of lender's remedies for a property
17 with such a lien. With respect to a property that meets
18 the underwriting criteria of the Association and the Cor-
19 poration without consideration of the PACE program lien,
20 the Association and the Corporation shall not require re-
21 payment of a PACE program tax or assessment in order
22 for a property owner to finance, refinance or transfer the
23 property. The underwriting standards shall provide that,
24 in the event that a tax or assessment under a PACE pro-
25 gram is delinquent, only the unpaid delinquent amount

1 [along with applicable penalties, interest and costs] will
2 be subject to foreclosure and not the entire amount.

3 (b) PROHIBITION OF DISCRIMINATION.—The Federal
4 Housing Finance Agency, the Federal National Mortgage
5 Association, and the Federal Home Loan Mortgage Cor-
6 poration, and all Federal agencies and all entities char-
7 tered under Federal law shall not discriminate against
8 communities implementing or participating in a PACE
9 program, including by prohibiting lending within the com-
10 munity or requiring more restrictive underwriting criteria
11 for properties within the community.

12 (c) DEFINITION OF PACE PROGRAM.—For purposes
13 of this section, the term “PACE program” means a prop-
14 erty assessed clean energy program under which a State
15 or political subdivision of a State levies taxes or assess-
16 ments on residential, commercial, agricultural, and other
17 real property to finance the installation of renewable en-
18 ergy and energy efficiency improvements.