



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: Housing & Community  
Development  
Department No.: 055  
For Agenda Of: April 13, 2010  
Placement: Departmental  
Estimated Tme: 30 minutes  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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TO: Board of Supervisors

FROM: Department David Matson, Housing & Community Development,  
Director(s) Interim Director (568-2068)  
Contact Info: Chris Rich, County Executive Office  
Fiscal & Policy Analyst (568-2060)

SUBJECT: **emPowerSBC: Resolution Confirming the Program Report**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Other Concurrence:** Treasurer – Tax Collector

**Recommended Actions:**

It is recommended that the Board of Supervisors take the following actions:

- a) Receive and file a report from financial advisor Public Financial Management entitled “Santa Barbara County Municipal Energy Financing Program: *Analysis of Financial Implementation Alternatives*” (Attachment 1).
- b) Adopt the County of Santa Barbara Resolution Confirming Report Relating to the Financing of the Installation of Distributed Generation Renewable Energy Sources and Energy Efficiency and Water Efficiency Improvements and Approving and Ordering Other Related Matters (Attachment 2).
- c) Approve and authorize the Chair to Execute Cooperative Agreements to Implement a Contractual Assessment Program in the County of Santa Barbara with each of the eight incorporated cities within the County of Santa Barbara, enabling property owners to participate in emPowerSBC (Attachment 3).
- d) Adopt the emPowerSBC Identity Theft Protection Program (Attachment 4).
- e) Authorize staff to develop an emPowerSBC Privacy Policy.
- f) Direct staff to include the emPowerSBC program in FY 10-11 Recommended Budget.

### **Summary Text:**

On March 16, 2010, the Santa Barbara County (County) Board of Supervisors (Board) adopted a Resolution Declaring Intention to Finance Installation of Distributed Generation Renewable Energy Sources, and Energy Efficiency and Water Efficiency Improvements (Resolution of Intention). With this action, staff was directed to:

- Identify financing options (Attachment 1).
- Draft a Program Report (Attachment 2).
- Coordinate the execution of implementing agreements with each of the County's eight incorporated cities (Attachment 3).
- Return to the Board on April 13, 2010, so that it may consider the final legislative actions necessary to establish the emPowerSBC program.<sup>1</sup>

Since the March 16, 2010 Board hearing, the emPowerSBC team worked with Public Financial Management (PFM), a leading local government financial advisor, to identify financing strategies that mitigate programmatic costs and risk to the County. The purpose of commissioning this independent report was to provide assurance that the financing strategy proposed by staff is appropriate. As illustrated in Attachment 1, PFM has identified the impact of using various options to finance emPowerSBC, and has recommended the use of Qualified Energy Conservation Bonds (QECBs) as the lowest cost option for the County. The County has been allocated \$4.2 million in QECBs from the California Treasurer's Office, and could be eligible for additional allocations of approximately \$20 million. Since financing must first be provided to property owners in order for the County to issue long-term debt, the use of QECBs and other options will require a \$5 million advance from the General Fund, as an interim source of credit. Once this interim credit is converted to long-term debt, the initial advance from the General Fund would be refreshed, enabling subsequent rounds of financing. In essence, this strategic investment forms the basis for the County's finance strategy, and staff concurs with PFM's recommendation. The County's emPowerSBC outside counsel (Jones Hall) has reviewed PFM's report, and has drafted related debt issuance documentation.

In addition to identifying financing strategies, staff has procured a host of web services from Renewable Funding to support outreach, operations, and financial services. These services require the adoption of an Identity Theft Protection Program (Attachment 4).

### **Background/Discussion:**

On December 1, 2009, the Board directed staff to implement a contractual assessment program (program) to finance energy and water conservation improvements, pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets & Highways Code (Chapter 29), which was amended by Assembly Bills (AB) 811 and 474. Since receiving this direction, staff has facilitated a series of required legislative implementation steps, as illustrated below.

- January – March 2010: Each city council unanimously adopted the County's Resolution of Intention, formalizing their interest in participating in emPowerSBC.

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<sup>1</sup> emPowerSBC stands for "Elective Municipal Programs to Optimize Water, Energy Efficiency, and Renewables in Santa Barbara County."

- March 16, 2010: The Board adopted the Resolution of Intention, directing staff to develop a Program Report (Attachment 2) and return on April 13, 2010 with the necessary documentation for the Board to consider program adoption.
- March – April 2010: The incorporated cities executed cooperative agreements, necessary for program participation (Attachment 3). Should the Board authorize execution of these agreements, property owners in the eight incorporated cities will be able to participate in emPowerSBC.

Today, the Board can take final legislative actions to establish emPowerSBC.

Summary of Finance Options Analyzed by PFM (Attachment 1)

PFM's analysis reviewed market conditions and requirements, as well as the success and shortcomings of emerging and established programs to identify realistic financing alternatives for emPowerSBC. As PFM has noted, virtually every jurisdiction in California has considered a PACE program (Property Assessed Clean Energy), similar to emPowerSBC. Dozens of jurisdictions are now progressing with program implementation. Much of this interest has been due to the success experienced by the Sonoma County Energy Independence Program (SCEIP). In just over a year, the SCEIP has approved over 1,100 applications totaling \$39 million. However, PFM reports that the SCEIP has been unable to secure long-term, third-party financing for its program. In fact, the program interest rate charged to participants (7 percent) has proven to be too low, given current market dynamics, to finance the costs of administering the program and securing long-term third-party financing. Accordingly, the SCEIP will be required to hold bonds issued to finance the SCEIP in the County Treasury Pool until the market rate for the SCEIP bonds drops below 7 percent.

To ensure that emPowerSBC maintains programmatic viability and can successfully access long-term financing, PFM evaluated and tested seven financing alternatives. These alternatives include issuing investment grade Limited Obligation Bonds and Certificates of Participation. In addition, PFM evaluated the impact of using Qualified Energy Conservation Bonds (QECBs) to lower the costs of these financing alternatives. QECBs are a new type of bond associated with the American Recovery and Reinvestment Act (ARRA), whereby the rate paid by issuers (i.e., the County) is subsidized by the federal government. These savings may be passed onto property owners. Presently, the County has access to a QECB allocation of \$4.2 million and could be eligible for additional allocations of approximately \$20 million.

In its review of these alternatives, PFM noted strategies to minimize risks to the County, while also achieving the lowest interest rates and related costs for program participation. Notably, many of these issues were identified in the County's municipal energy financing program feasibility study, presented to the Board on December 1, 2009. The PFM report concluded that:

- Sufficient program scale and diversity in program participation (approximately 500-600 assessment contracts) is needed for a successful long-term debt issuance.
- A debt-service reserve fund equal to approximately 10% of total assessment contracts is needed for a successful long-term debt issuance. Cash-funding the debt reserve fund with an advance from the General Fund lowers the effective rate that must be charged to program participants.
- Coverage for administrative costs, such as the costs of debt issuance, must be considered.

- The use of the Treasury Investment Pool may be appropriate for certain contractual assessments, specifically those with a maturity of five years or less, but is not appropriate for contractual assessments with a term exceeding 5 years.
- A successfully completed judicial validation process is necessary before financing can be issued.
- Including the emPowerSBC contractual assessments in the County's Teeter Plan can help lower the interest rate for program participants.
- Commercial properties can pose unique credit challenges and opportunities. Specifically, the emPowerSBC program should be managed so that financing for commercial properties is disaggregated from financing for residential properties.

In closing its report, PFM concluded that an initial investment or advance from the General Fund would be required to finance the initial tranche of contractual assessments for participants in the emPowerSBC program. This confirms, and is consistent with, the financing strategy presented to the Board on December 1, 2009. Notably, this advance is necessary to access the County's QECB allocation, and several financial institutions have already indicated willingness to buy this debt from the County. Ultimately, the advance acts as a tool to catalyze the revolving loan fund needed to finance contractual assessments, cover the County's administrative costs, and support long-term program sustainability. Without question, the need to keep all financing options available in order to maintain flexibility is a critical theme in PFM's report.

*emPowerSBC Program Report (Attachment 2)*

One of the key legislative implementation steps for emPowerSBC includes adoption of the Program Report. The Program Report is a policy document, intended for the general public that fulfills certain statutory requirements and outlines administrative parameters. It includes:

- A map showing the boundaries of the territory within which contractual assessments are proposed.
- A draft assessment contract between a property owner and the County.
- Program policies concerning contractual assessments, such as a list of eligible improvements; identification of the County official authorized to enter into contractual assessments on behalf of the County (i.e., Program Administrator); the maximum aggregate dollar amount of contractual assessments (or total potential demand, currently estimated at \$160 million by 2020, but subject to increase depending upon demand for emPowerSBC financing); a method for setting application priority (i.e., first-come-first served policy); and, underwriting criteria.
- Minimum and maximum financing amounts. The emPowerSBC program is proposing a minimum financing amount of \$2,500 per assessment. Any contractual assessment equal to or greater than \$100,000 would require approval by the Board.
- A financial plan. As discussed, the emPowerSBC program is proposing an advance of \$5 million from the General Fund to seed a revolving loan fund capable of covering administrative costs and financing authorized improvements for property owners.
- Information on the County's cost of placing assessments on the tax roll and required consultations with the Auditor-Controller. This is currently estimated at approximately \$40 per contractual assessment.

The components of the Program Report may be changed periodically by the Program Administrator, in consultation with the Auditor-Controller, to effectuate the objectives of the emPowerSBC program and maintain consistency with federal and State PACE program standards. Notably, the County has worked with the eight incorporated cities to develop the Program Report. Execution of the cooperative agreements included as Attachment 3 will enable program implementation in these cities.

#### Identity Theft Protection Program (Attachment 4)

Beyond the policies contained in the Program Report, an Identity Theft Protection Program is required as part of the emPowerSBC program. The Fair and Accurate Credit Transactions Act of 2003 requires lenders to have an Identity Theft Protection Program in place. This program is to include policies and procedures to:

- Identify red flags (i.e., patterns, practices or specific activity that indicates the possible existence of identity theft).
- Respond appropriately to such red flags.
- Ensure that the identity theft prevention program is updated periodically.

Accordingly, staff has worked with outside counsel to develop the Identity Theft Protection Program provided as Attachment 4. If adopted, this program will complement an emPowerSBC privacy policy that the Board is requested to authorize staff to develop for posting on the emPowerSBC website.

#### Program Governance

Given the need to respond to evolving market conditions, as well the innovative nature of PACE financing, the proposed governance of emPowerSBC seeks to ensure appropriate executive, fiscal, and legal oversight. The County Executive Officer, or his designee (currently David Matson), has been identified as the Program Administrator. The governance structure includes opportunities for elected officials, including the Treasurer-Tax Collector and Auditor-Controller to interface with and provide guidance to the Program Administrator. In addition, the Program Administrator will be required to provide periodic updates to the County's Debt Advisory Committee regarding the interest rate environment, and to the Board regarding program implementation and operations, as illustrated in the emPowerSBC Program Report. The current project team, composed to technical staff experts across all facets of emPowerSBC, will remain available to assist the Program Administrator.

#### Next Steps

If the Board establishes the emPowerSBC program, staff will initiate a judicial validation action in coordination with outside counsel.<sup>2</sup> During this process, the County will seek from the superior court a judgment that the contractual assessments are valid and that the various obligations issued by the County and the related legal documents are legal, valid and binding. However, before a judicial validation action can be filed, the Board must first authorize issuance of the obligations and approve the related legal documents. Accordingly, outside counsel has drafted documents for two different financing structures, both of which would be judicially validated: 1) A Limited Obligation Bond and 2) a Certificate of Participation (COP). The validation of multiple financing options is intended to preserve program flexibility to respond to an evolving long-term market.

Following the completion of a successful validation process, which is expected to take approximately 60 – 90 days from filing of the complaint, emPowerSBC may enter into contractual assessments and

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<sup>2</sup> On December 1, 2009, the Board approved pursuit of judicial validation with outside counsel, given adoption of a program.

provide financing to program participants. When the program is ready to undertake a long-term financing, using either Limited Obligation Bonds, COPs, or a combination of both, which emPowerSBC staff expects to occur after approximately \$5 million has been advanced from the General Fund, staff must return to the Board to define acceptable sale terms, including whether the issuance will be competitive or negotiated, the maximum principal amount of the issuance, and the interest rate. In addition, staff will return to the Board for approval of sale-related documents including a purchase agreement with the underwriter/purchaser and official statement.

Launch Activities

Given Board direction, staff will continue with emPowerSBC outreach and start-up activities. Planned outreach events through April include:

- A booth at the Earth Day celebration in Santa Barbara.
- Participation in the Santa Ynez Valley Earth Day event.
- Workshops in North County in coordination with the Santa Maria Valley Contractors Association.
- Workshops on the South Coast in coordination with the Santa Barbara Contractors association
- Workforce development workshops in coordination with the County’s Workforce Investment Board, California Energy Commission, and local businesses.
- Pre-scheduled presentations to various homeowners associations and trade groups.

**Fiscal Analysis:**

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund	NA	NA	\$ 5,000,000.00
State			
Federal			
Fees			
Other:			
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,000,000.00</b>

Narrative:

If emPowerSBC is established by the Board, a one-time \$5 million advance from the General Fund to Fund 1940 (the emPowerSBC enterprise fund) will be included in the recommended Fiscal Year 10-11 Budget. As indicated in the Board hearing on December 1, 2009, this level of resources is necessary to provide interim financing to property owners for installation of energy efficiency, water conservation, and renewable energy improvements. The advance would be reimbursed through a long-term financing, using Limited Obligation Bonds and/or COPs, and then recycled into financings for new groups of property owners. This process would repeat itself over time, and PFM has indicated that this strategic initial investment of \$5 million to launch the financing process could leverage over \$40 million in contractual assessments. This number could be higher, given market demand.

As the advance from the General Fund would provide necessary interim credit for the emPowerSBC program, it would constitute a long-term commitment of funds, with the potential for limited liquidity.

However, this strategic investment from the General Fund would be secured by contractual assessments and a lien against private property, minimizing the County's risk of a financial loss. In addition, interest would be earned from the contractual assessments. If the emPowerSBC program is not successfully judicially validated, or if demand for the program is not sufficient, all or any remaining portion of the advance would be returned to the General Fund.

As an enterprise fund, the emPowerSBC program is expected to pay for itself over time. Operational costs of approximately \$900,000 per year will be covered through an Energy Efficiency and Conservation Block Grant (EECBG) from the California Energy Commission as well as program proceeds. If the program is not met with sufficient demand, it will be shut down.

**Staffing Impacts:**

**Legal Positions:**

4 New Positions

**FTEs:**

4 New FTE

Four new positions and FTE will be included in the FY 10-11 recommended budget for the emPowerSBC program. These staff will include a 1 program manager, 1 program associate and 2 program specialists with specialized finance, lending, title and escrow experience.

**Special Instructions:**

NA

**Attachments:**

- Attachment 1: Public Financial Management report entitled "Santa Barbara County Municipal Energy Financing Program: *Analysis of Financial Implementation Alternatives.*"
- Attachment 2: County of Santa Barbara Resolution Confirming Report Relating to the Financing of the Installation of Distributed Generation Renewable Energy Sources and Energy Efficiency and Water Efficiency Improvements and Approving and Ordering Other Related Matters.
- Attachment 3: Cooperative Agreements to Implement a Contractual Assessment Program in the County of Santa Barbara with each of the eight incorporated cities.
- Attachment 4: emPowerSBC Identity Theft Protection Program.

**Authored by:**

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**cc:**

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