

## STAFF REPORT

**TO:** Council Finance Committee

**FROM:** Lauren Bradley, Finance Director  
Maggie Ullman, Energy Coordinator

**DATE:** February, 28<sup>th</sup> 2012

**RE:** Residential PACE action items and an information update on commercial PACE

**SUMMARY STATEMENT:** The purpose of this staff report is to provide recommended action items in support of residential PACE programs and an update on commercial PACE.

### **BACKGROUND: Residential PACE**

The PACE model ran into significant barriers when the Federal Housing and Finance Administration wrote directives in July 2010 and February 2011 to Fannie Mae, Freddie Mac and the Federal Home Loan Banks to “continue to refrain from buying mortgage loans secured by properties with outstanding first-lien PACE obligations and carefully monitor through their seller-servicers any programs that create such first-lien obligations.” The FHFA’s stated primary concern is that these types of loans “pose unusual and difficult risk management challenges for the (banks).”

#### Addressing Federal Barriers

Municipalities across the country have coordinated efforts to address the FHFA directive through two primary routes: HR 2599, a federal legislative fix, and an Advanced Notice of Rulemaking (ANRM, a judicial fix. Asheville City Council can join these efforts to support removing the federal regulatory barriers to residential PACE.

- 1) HR 2599: This bill is to prevent Fannie Mae, Freddie Mac and other Federal residential and commercial mortgage lending regulators from adopting policies that contravene established state and local property assessed clean energy laws.
- 2) Advanced Notice of Rulemaking (ANRM): The FHFA was challenged in federal court regarding the legality of the FHFA’s ability to intervene regarding PACE without following the required process of rulemaking. As a result of this case, the FHFA is seeking public comments regarding whether their previous directive should be maintained, changed, or eliminated, and whether other restrictions or conditions should be imposed.

#### Addressing State Barriers

Should federal regulatory barriers be removed, North Carolina municipalities would then need to re-evaluate state PACE legislation to ensure it complies with new federal guidance.

### **BACKGROUND: Commercial PACE**

Current State legislation authorizes counties and municipalities to establish energy assessments, whereby a local government installs a specified certain energy efficiency improvement or distributed generation renewable energy project on private, real property (or contracts for its installation) and imposes a special tax assessment on the real property to recoup the costs of the project. This type of energy assessment program is

To implement an energy assessment on commercial properties, the City of Asheville would need access to capital to fund the upfront costs of installation. Debt financing is an option the City could consider for funding

assessment projects; however, financing would need secured at a low rate of interest to both (1) cover the City's debt service payments and other associated administrative costs and (2) make the assessment model attractive to a commercial entity. Currently, the capital markets are not offering a financing product that would achieve a viable interest rate for this type of model. Instead, staff's analysis indicates that the only financially feasible method for commercial PACE capitalization is through utilizing Qualified Energy Conservation Bonds (QECCB's). QECCB's are qualified tax credit bonds which allow the borrower to only pay back the principle, and the bondholder receives federal tax credits in lieu of traditional bond interest.

QECCB's are allocated to states, who then make allocations to local jurisdictions. For each allocation 70% must be used for public projects and no more than 30% are allowed to be used for private activity projects. The City of Asheville did not receive a direct allocation. Buncombe County did receive an allocation totaling \$2,394,259, and it is staffs understanding that they do not intend to utilize this borrowing option. The QECCB rules indicate that the county can allow the city to access this allocation on their behalf.

### **RECOMMENDATIONS:**

Residential PACE: Staff recommends Council work with federal legislators to support HR , write a letter to the FHFA with public comments and work with state legislators to introduce an amendment to HB 1829. Staff further requests policy direction in regards to commercial PACE.

Commercial PACE: If Council is interested in pursuing the commercial PACE program model staff proposes the following next steps in sequence with updates to Council after each step:

1. Pursue approval from the Buncombe County Commissioners to access the county's QECCB's.
2. Establish strategic partnerships with potential commercial partnership to establish a stakeholder group of likely commercial borrowers for a pilot program.
3. Fully design a pilot program for council approval.

ATTACHEMENTS: Resolution Supporting Residential PACE  
Letter with Public Comment to the FHFA