



## Western Riverside Council of Governments

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June 7, 2018

Mark Dyer  
Regulations Coordinator  
Department of Business Oversight  
Legal Division  
515 K Street, Suite 200  
Sacramento, CA 95814-4052



**Subject: WRCOG Comments on Proposed Rulemaking Implementation of AB 1284**

Dear Mr. Dyer:

On behalf of the Western Riverside Council of Governments' (WRCOG) Property Assessed Clean Energy (PACE) Programs (including the statewide California HERO Program, and our regional Programs that include HERO, CaliforniaFIRST, and PACE Funding), I would like to thank the Department of Business Oversight (DBO) on its effort to work with California agencies as the regulatory oversight authority for PACE in California. Thank you also for this opportunity to provide the following comments on the proposed rulemaking implementation of the DBO Guidelines.

### Definitions

- § 1620.02 (a) – *“Ability to pay” means the ability of a property owner to pay every PACE assessment on or before the final date to pay the assessment as scheduled, from the property owner’s income, without relying on the equity in a residential property owner’s home.”*

Property owners must make payment on assessment installments twice a year. Consider changing definition to reflect that ability to pay must take into account the property owner’s ability to make payment for both installment payments during each fiscal year until the end of the term of the Assessment Contract. This action should incur no fiscal impact.

- § 1620.02 (c) – *“A program administrator does not include bond counsel, financial advisors, assessment engineers or administrators, trustees or other paying agents, investors, or staff of a public agency, unless, in addition to their role as bond counsel, financial advisor, assessment engineer or administrator, trustee or other paying agent, investor, or staff of a public agency, they also contract with a public agency as the party responsible for originating assessments with property owners for the administration of a PACE program.”*

WRCOG respectfully requests exempting the public agency, its officers and employees from being considered a program administrator and not just staff. Also, bond counsel, assessment engineers and financial advisors all contract with the sponsoring public agency for ongoing administration of PACE Programs. As such, under this definition, such entities would need to register as program administrators. This action should incur no fiscal impact.

- § 1620.02 (d)(D/E) – “Discussing the terms of a PACE assessment with a property owner. **This does not apply to the sponsoring agency, its bond counsel, assessment engineers, or financial advisors.**” “Describing the characteristics of a PACE assessment to a property owner. **This does not apply to the sponsoring agency, its bond counsel, assessment engineers, or financial advisors.**”

WRCOG discusses the terms and characteristics of the PACE assessment with property owners that may have questions or in its quality assurance calls (which take place after the administrator’s confirm term calls). On occasion, WRCOG has engaged its staff and attorneys to discuss complaints with property owners. Under these discussions, the terms and characteristics of a PACE Assessment Contract would be discussed. This would make them a program administrator under DBO guidelines. Consider clarifying that these definitions do not apply to sponsoring public agency during application stage and sponsoring public agency and related consultants in complaint stage. This action should incur no fiscal impact.

- § 1620.02 (g) – *“Administering a PACE program on behalf of a public agency” means managing a PACE program, or parts thereof, on behalf of a public agency.*”

This definition is very broad and would include a number of the sponsoring public agency’s consultants. Please see comment to (c) above.

- § 1620.02 (g) - *“Extinguishment of a PACE assessment” means the property owner has satisfied all obligations under an assessment contract and no further amount related to the PACE assessment will appear on the property owner’s **taxes tax bill.**”*

WRCOG respectfully requests the modification to show that the assessment will show on the tax bill itself. This action should incur no fiscal impact.

### **Obligations of Program Administrator**

- § 1620.03 (a) – “Every program administrator shall maintain procedures established to ensure sufficient sources of capital to finance the **efficiency authorized** improvements **for assessments it has originated that it has obligated to finance.**”

The Assessment Contract is between the sponsoring public agency and the property owner so the program administrator has not “obligated” itself to finance the assessment contract. Additionally, there are references in this section and other sections to “efficiency improvements.” PACE law allows for the financing of items other than efficiency improvements such as electric vehicle charging stations and seismic retrofitting. Consider a broad definition of “Authorized Improvements” which references back to the applicable statutory authorities. This action should incur no fiscal impact.

### PACE Pricing

- § 1620.04 – *“The data shall be provided to the Commissioner **and/or sponsoring agency** upon request.”*

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner’s office includes language that directs the program administrator to regularly share updates of requested information by the Commissioner to the respective sponsoring agency. This action should incur no fiscal impact.

### Advertising Standards

- § 1620.05 (a)(5) – *“Advertise property improvements that are not efficiency improvements in the same advertisement.”*

WRCOG respectfully requests that this language be removed. A contractor may provide a number of services that include not only PACE Improvements, but also their broader scope of work. It seems unduly burdensome for the contractors to produce separate, special advertising solely for PACE Improvements. This action should incur no fiscal impact.

### Mandatory Brochure

- § 1620.06 (a)(2) – *“The program administrator shall obtain approval of the brochure from **the program’s sponsoring agency and the Commissioner** prior to use.”*

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in determining what materials are developed and utilized for its Programs. WRCOG requests that the brochure be approved by WRCOG and then submitted to the Commissioner prior to use. This action should incur no fiscal impact.

- § 1620.06 (a)(3) – *“The Commissioner may **collaborate with sponsoring agency** to develop a standard brochure for every program administrator to use, and may require that a program administrator use that brochure.”*

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in determining what materials are developed and utilized for its Programs. WRCOG requests that if the Commissioner’s office creates a standard brochure, then WRCOG and other sponsoring agencies should be able to provide input prior to approval and use. This action should incur no fiscal impact.

- § 1620.06 (c)(6) – *“The risk of a **judicial foreclosure or tax sale** for failing to pay the assessment contract, including the timing of the sale and the minimum amount for which the property may be sold.”*

A tax sale is initiated by a county after five years of delinquencies in the payment of property taxes. In the case of PACE, the sponsoring public agency has the right to initiate judicial foreclosure for any delinquencies. This would generally occur prior to a tax sale. As such, this disclosure should discuss the risk of judicial foreclosure as well as the county's tax sale. This action should incur no fiscal impact.

- § 1620.06 (c)(7) – “A recommendation that a property owner consult a tax advisor to determine whether the *energy-related authorized* improvement provides any tax benefits.”

Consider adding that the property owner consult a tax advisor regarding the tax benefits of the PACE financing in addition to the improvements. This section references “energy-related improvements” but statute authorizes PACE to finance additional improvements. See comment 1620.03(a).

### Books and Records

- § 1620.07 (b) – “The records required to be maintained shall, at a minimum, include the following...”

WRCOG respectfully requests to consider including required disclosure documents and verification of eligibility to the list per recent legislation. This action should incur no fiscal impact.

- § 1620.07 (b) – “A program administrator must maintain agreements with local agencies in paragraph (11) during the term of the agreement plus three years *as it shows the authority to originate assessment contracts and levy assessments annually in such local jurisdiction.*”

WRCOG respectfully requests to consider including additional language to show the authority to originate assessment contracts and levy assessments for the program. This action should incur no fiscal impact.

### Complaint Processes and Procedures

- § 1620.08 (a) – “Every program administrator shall establish and maintain a complaint process approved by the Commissioner under which a property owner may submit a complaint to the program administrator. *All complaints, requests, inquiries, resolutions, and other issues arising from stakeholders, property owners, PACE Solicitors, etc., shall be shared with the respective sponsoring agency in a timely manner.*”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in the complaint process for its program. WRCOG requests that the Commissioner's office includes language to direct the program administrator to regularly share updates of complaints, requests, and other issues arising from stakeholders, property owners, PACE solicitors, etc. This action should incur no fiscal impact.

- § 1620.08 (e) – “The program administrator shall maintain a log *and share with the sponsoring authority*, of all complaints that includes the following information for each complaint...”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in the complaint process for its program. WRCOG requests that the Commissioner's office includes language to direct the program administrator to regularly share updates of complaints, requests, and other issues arising from stakeholders, property owners, PACE solicitors, etc. This action should incur no fiscal impact.

- § 1620.08 (h) – “The complaint process shall require the program administrator to attempt to resolve complaints regarding PACE financing within 60 days *and update the sponsoring agency every 30 days*.”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in the complaint process for its program. WRCOG requests that the Commissioner's office includes language to direct the program administrator to regularly share updates of complaints, requests, and other issues arising from stakeholders, property owners, PACE solicitors, etc. This action should incur no fiscal impact.

- § 1620.08 (j) – “Upon resolution of the complaint, the program administrator shall send a closing letter to the complainant *and the sponsoring agency* that provides the following...”

WRCOG requests that the Commissioner's office includes language that directs the program administrator to send a copy of each closing resolution letter to the sponsoring agency. This action should incur no fiscal impact.

## Completion of Work

- § 1620.09 (a) – “A program administrator shall obtain a copy of each home improvement contract from a PACE solicitor. *The home improvement contract shall be sent to the sponsoring agency as part of the PACE assessment contract packet required for countersignature and approval.*”

WRCOG supports the directive to require all Home Improvement Contracts (HICs) be collected prior to securing PACE financing. WRCOG would also like to have the HIC be submitted to the sponsoring agency at the time of countersignature of the assessment contract. This action should incur no fiscal impact.

- § 1620.09 (b) – “Before providing the final payment on a home improvement contract... every building permit required ... *has received final approval and has been signed by a building inspector, have been pulled* as required by the local jurisdiction. *Ultimately, it is the responsibility of the property owner to finalize the final required permits.*”

WRCOG's programs currently do not require that the final approved permit to be submitted to the program administrator before funding the project. Ultimately, it is the responsibility of the



property owner to schedule the final permit inspection with the local jurisdiction. Having the PACE solicitor wait for payment could be detrimental as the property owner's schedules may not align with those of local building / permit inspectors. Since the PACE solicitor is not paid until the work is completed, the Completion Certificate (executed by the property owner) serves to the program that the work is complete and that the property owner is responsible for completing the final inspection, and that the PACE solicitor may be paid for the completed work.

- § 1620.11 (b)(3)(J) – *“A program administrator shall prepare or approve all advertisements, marketing materials and other information about the PACE program that is provided to property owners. ~~including all document related to the assessment contract.”~~*

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in determining what materials are developed and utilized for its Programs. Since the assessment contract exists between the sponsoring agency and the property owner, the administrator may provide material suggestions, but ultimately it is up to the sponsoring agency to determine what documents are prepared in relation to the assessment contract. This action should incur no fiscal impact.

#### **Unfair Business Practices**

- § 1620.10 (a)(5) – *“Paying a PACE solicitor for work for which the solicitor has already received payment from another source.”*

It would be difficult to determine if the solicitor had already received payment from another source. WRCOG respectfully requests that this language be removed. This action should incur no fiscal impact.

- § 1620.10 (a)(7) – *“Fails to complete the **PACE eligible** home improvement contract that is financed by the assessment contract.”*

The program administrator does not complete the home improvement, PACE solicitors are responsible for the installation and completion of the project. Additionally, home improvement contracts may contain items not financed by PACE. Consider limiting the scope of the program administrator's responsibility to only those improvements financed by the PACE assessment contract. This action should incur no fiscal impact.

#### **Solicitor Enrollment Standards or Processes**

- § 1620.11 (b)(4)(B)(i) – *“The complaint involves a representation that the efficiency improvements **financed by the PACE assessment** failed to perform as represented.”*

Scope should be limited to the improvements financed by the PACE assessment. This action should incur no fiscal impact.

- § 1620.11 (b)(4)(C)(i) – “A single point of contact for the property owner, who may be a representative of the *PACE solicitor*, the program administrator or the sponsoring public agency.”

Many times, this dispute is with the PACE solicitor. WRCOG respectfully requests removing the PACE solicitor as a contact point for the property owner. This action should incur no fiscal impact.

- § 1620.11 (e) – “A program administrator shall notify the Commissioner *and sponsoring agency* of the enrollment of a PACE solicitor within 30 days of enrollment in the form required by the Commissioner, which may be in the form of an electronic transfer of data, and which may include personally identifying information.”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner’s office includes language that directs the program administrator to regularly share updates of requested information by the Commissioner to the respective sponsoring agency. This action should incur no fiscal impact.

#### **Solicitor Agent Enrollment Standards or Processes**

- § 1620.12 (f) – “A program administrator shall notify the Commissioner *and sponsoring agency* of the enrollment of a PACE solicitor within 30 days of enrollment in the form required by the Commissioner, which may be in the form of an electronic transfer of data, and which may include personally identifying information.”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner’s office includes language that directs the program administrator to regularly share updates of requested information by the Commissioner to the respective sponsoring agency. This action should incur no fiscal impact.

#### **Cancelling Enrollment**

- § 1620.16 (b)(2) – “Notifying the Commissioner *and sponsoring agency* of any change to the enrollment status of each PACE solicitor and PACE solicitor agent.”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner’s office includes language that directs the program administrator to regularly share updates of requested information by the Commissioner to the respective sponsoring agency. This action should incur no fiscal impact.

- § 1620.16 (b)(2)(A) – “A program administrator shall notify the Commissioner *and sponsoring agency* of a change to the enrollment status of each PACE solicitor and PACE solicitor agent either by paper or through an electronic method, as determined by the Commissioner.”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner's office includes language that directs the program administrator to regularly share updates of requested information by the Commissioner to the respective sponsoring agency. This action should incur no fiscal impact.

- § 1620.16 (b)(2)(B) – “The Commissioner may require a program administrator to notify the Commissioner **and/or sponsoring agency** of changes in status daily through an automated electronic file transfer, or may require continuous updates in real time, or may require notification on a periodic schedule less frequent than real time or daily.”

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner's office includes language that directs the program administrator to regularly share updates of requested information by the Commissioner to the respective sponsoring agency. This action should incur no fiscal impact.

- § 1620.16 (b)(2)(C) – *“If the enrollment of a PACE solicitor or PACE solicitor agent is canceled, the program administrator shall notify the Commissioner **and sponsoring agency** using one of the following categories to explain the reason for the cancellation.”*

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner's office includes language that directs the program administrator to regularly share updates of requested information by the Commissioner to the respective sponsoring agency. This action should incur no fiscal impact.

## Education Program

- § 1620.17 (3) – *“Each program administrator shall **annually** provide each enrolled PACE solicitor agent with information on changes to the PACE program and any changes to previous training material **as they are released. This information should also be shared with the sponsoring agency.**”*

WRCOG requests that the program administrator provide regular updates to PACE solicitors and their agents as new materials, terms, and developments are implemented in the program. This action should incur no fiscal impact.

- § 1620.17 (f) – *“Every ~~four~~ **two** years a program administrator shall require a PACE solicitor agent to complete a training update which shall include information on recent developments to PACE programs and reminders about practices that constitute unfair business practices under rule 1620.10.”*

WRCOG requests that the program administrator provide training every *two* years to PACE solicitors and their agents. This action should incur minimal fiscal impact since some



administrators already require their solicitors to engage in an annual re-training or re-certification courses (this may occur in-person or online).

### Annual Report Data

- § 1620.19 (a)(3)(G) – *“The number of assessment contracts paid in full during the prior calendar year as a result of a residential mortgage refinance, and as a result of a property sale.”*

In WRCOG’s experience of operating a PACE program, we have found that property owners prepay their assessments for a multitude of reasons, some outside of a property sale or refinance. Also, when a property owner pays off their assessment, they may not care to disclose why they are paying off the assessment. It would be unrealistic, time consuming, and an inefficient use of resources and finances to be able to acquire this information in an accurate and complete manner to the Commissioner. WRCOG respectfully requests that this language be removed.

- § 1620.19 (a)(3)(H) – *“The title changes for properties with PACE assessments during the prior year that did not result in the payoff of an assessment contract.”*

It would be unrealistic, time consuming, and an inefficient use of resources to be able to manually pull a title report on the 100,000+ outstanding assessment contracts each year. Since a PACE assessment runs with the land, property owners do not notify program administrators or the sponsoring agency when there is a sale of property or change of title. WRCOG respectfully requests that this language be removed.

### Responsible for the Difference

- § 1620.26 – *“If a program administrator is responsible for the difference between the determination of a property owner’s ability to pay the annual PACE obligations and the actual amount financed by the property owner, the following shall apply **and be reported to the sponsoring agency and the Commissioner.**”*

As the sponsoring agency and the local government oversight authority, it is imperative that WRCOG remain involved in all aspects of its program. WRCOG requests that the Commissioner’s office include language that directs the program administrator to regularly share these updates to the Commissioner and to the respective sponsoring agency. This action should incur no fiscal impact.


### Additional Comments

- For future consideration, create a dialogue with PACE bond issuers and County Tax Collectors to develop a comprehensive PACE prepayment process where a property owner may be able to amend their annual tax bill if the PACE financing is paid off before the assessment maturation.

Mr. Dyer  
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Again, I would like to thank the Department of Business Oversight for taking the time to receive and review our comments. We look forward to working with you on the proposed implementation guidelines. If you have any questions or need additional information, I can be reached at (951) 405-6720 or at [cdailey@wrcog.us](mailto:cdailey@wrcog.us).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Casey Dailey', with a stylized flourish extending to the right.

Casey Dailey  
Director of Energy and Environmental Programs