

# Testimony of William E. Dornbos

Senior Attorney & Connecticut Director

Acadia Center

Public Hearing, March 8, 2016



## Before the Banking Committee

Honorable Chairpersons Winfield and Lesser, Ranking Members Martin and Simanski, and Committee Members:

Acadia Center appreciates this opportunity to provide written testimony to the Banking Committee regarding the bill referenced below. Acadia Center is a nonprofit research and advocacy organization committed to advancing the clean energy future. Acadia Center is at the forefront of efforts to build clean, low carbon, and consumer friendly economies.

### R.B. 5563, AAC Residential Property Assessed Clean Energy

**Position: Acadia Center supports, but with recommended changes to ensure cost-effective energy savings, to increase consumer protections, and to require periodic reporting on program results.**

Acadia Center supports the use of residential property assessed clean energy (“R-PACE”) as an important tool to help finance clean energy and energy efficiency improvements in residential buildings.

We do have concerns about R.B. 5563 in its current form, however, based on our review of the implementation of R-PACE in California (through the HERO program, one of the largest of the R-PACE programs in that state and even nationally). Our concerns focus on two issues: (1) the need to ensure that energy savings measures are cost-effective for homeowners; and (2) the need for better consumer protections, particularly disclosure of financing terms and conditions.

On the issue of energy savings, the primary problem is that R.B. 5563 does not require those savings to be cost-effective, thereby allowing customers to invest in projects that may cost more than they save. For example, in California, a large portion of the efficiency measures financed by R-PACE are windows, which traditionally do not have good paybacks and often cost substantially more than they save. R-PACE in California has also established low efficiency thresholds for program eligibility for key products, such as furnaces and central air conditioners. This means non-Energy Star equipment can be eligible, which is problematic because even Energy Star levels are not typically considered high efficiency. In fact, Connecticut’s energy efficiency programs have often moved beyond Energy Star levels for setting product eligibility because those levels can lag technology advances. Our recommendation is that R.B. 5563 should be amended to make the R-PACE eligibility of efficiency products and measures fully consistent with the eligibility requirements of the state’s energy efficiency programs (also known as the Conservation & Load Management programs). This has been the approach for the Connecticut Green Bank’s existing Smart-E loan.

On the issue of consumer protection, we have several concerns. Primary among them is the inadequate disclosure of effective interest rates. The effective interest rate is the actual interest rate the consumer will pay and it includes all financed fees, such as mandatory closing costs. With R-PACE in California, the effective interest rate is higher than the assessment interest rate, which is often in the 7-9% range. Despite

this, the HERO program application in California discloses the effective interest rate on page 11 in an exhibit with little explanation – not on the first page, in large print, through a unique notice (as with the warning to seek legal advice in Section (1)(f)), or in any clear and obvious way. R.B. 5563 should be amended to require prominent and meaningful disclosure to consumers of the effective interest rate of R-PACE financing. We are concerned that some residential customers will not understand this crucial R-PACE loan term or will not notice it in the loan application unless Connecticut statute requires prominent disclosure with a clear explanation of all fees included in it.

To further underscore this point, please see the following charts that compare R-PACE with the existing Smart-E and home equity loan products available in the Connecticut market.

### Loan Comparison

|                              | HERO R-PACE Loan | CGB Smart-E Loan | Home Equity Loan |
|------------------------------|------------------|------------------|------------------|
| Improvement Cost             | \$13,250         | \$13,250         | \$13,250         |
| Annual Payment               | \$2,392          | \$1,764          | \$1,610          |
| Total Payments               | \$23,918         | \$17,644         | \$16,098         |
| Total Interest and Fees Paid | \$10,668         | \$4,394          | \$2,848          |

### Factors Driving Differences

|                           | HERO R-PACE Loan | CGB Smart-E Loan | Home Equity Loan |
|---------------------------|------------------|------------------|------------------|
| Term                      | 10 Years         | 10 Years         | 10 Years         |
| Interest rate             | 7.69%            | 5.99%            | 4.00%            |
| Additional Fees Financed  | \$1,232          | 0                | 0                |
| Additional Fees Collected | \$350            | 0                | 0                |
| Time until First Payment  | 13 months        | 1 month          | 1 month          |

For the same improvement cost and the same ten-year term, R-PACE financing will cost substantially more for consumers after all interest and fees are paid. This needs to be fully understood by residential consumers.

We have additional consumer protection concerns with R-PACE financing in California that we are not highlighting here in our testimony. They include:

- The substantial lag between loan closing and first payment, leading customers to pay unnecessary interest on the full principal (and fees) during that extended time, sometimes more than a year;
- The loan-to-value (“LTV”) ratio in the HERO program allows the combination of the mortgage and R-PACE loan to be up to 100% of a home’s value, which is higher than the 80% or 90% LTV more common in traditional lending, particularly after the last housing bubble. With a 100% LTV, small changes in home values could lead to consumers being “underwater” on their homes and unable to sell them;
- The home value used in the LTV is based on an “automated valuation model” rather than an appraisal of each property. This could increase the chances of a homeowner being “underwater” on their home; and
- R-PACE loans can complicate the sales process, often requiring the seller to pay them off at closing before transferring to the new owner. There have also been instances where cash sales have been made without disclosure of the R-PACE loan, leading to lawsuits by buyers to recover the funds to pay off the loan.

Please see the attached media articles for more details on various consumer concerns in California. Given these issues, we strongly recommend that the Banking Committee amend R.B. 5563 to ensure that R-PACE in Connecticut has improved consumer protections.

Finally, we recommend that the Banking Committee amend R.B. 5563 to require periodic reports from the R-PACE program administrators with specific issues to be addressed, including any efforts to evaluate or verify savings, data on the types of energy saving products and measures installed, and any consumer complaints regarding contractor practices, R-PACE financing terms or enforcement, or issues with claimed energy savings. R.B. 5563 is currently silent on this important issue of reporting and disclosure of program performance and results.

As advocates for a clean energy future, we want to see financial innovations like R-PACE thrive. Our testimony today is intended solely to help ensure that R-PACE will accelerate clean energy growth in the residential sector in Connecticut, not impede it through flawed implementation.

Thank you again for the opportunity to testify. Please do not hesitate to contact me if you have any questions.

### **For more information:**

William E. Dornbos, Senior Attorney & CT Director, [wdornbos@acadiacenter.org](mailto:wdornbos@acadiacenter.org), (860) 2460-7121 ext.202

# THE VALLEY BUSINESS JOURNAL

Serving Southwest Riverside County Since 1989

## HERO Energy Retrofit Program? Buyer Beware.



by Gene Wunderlich, Sr. Staff Writer March 3, 2015

*So, be an informed consumer. Understand that the energy retrofit you are so enamored with may not increase the salability of your home and in some cases may reduce it. It will make it more difficult for a buyer to obtain a loan or to qualify for a loan if they can find a willing lender. After all, they will have to qualify for that extra \$200 or \$300 /month just as if they were buying a bigger, more expensive home. If they could afford a bigger, more expensive home, that's probably what they would have been looking at to begin with. It may also make it more difficult to refi your home into a lower interest rate. FHFA streamline loans are not available to you at this time unless you pay off that first lien.*

<http://thevalleybusinessjournal.com/real-estates/item/3459-hero-energy-retrofit-program-buyer-beware/>



BUSINESS

### Riverside County DA investigating how contractors pitch HERO program

*A real estate fraud investigator wants to determine if contractors are properly informing consumers who install solar panels and make other "green" improvements*

*Riverside County Deputy District Attorney Raymond Ramirez on Wednesday revealed an investigation is underway over the way consumers are being sold energy-efficient products through the HERO program.*

*Ramirez confirmed the probe during a forum hosted by the Inland Valleys Association of Realtors.*

*Ramirez, a member of the Riverside County District Attorney's Office's real estate fraud unit since 2006, said the district attorney has received complaints, and he will be looking into the way the HERO program has been pitched to consumers by contractors.*

*When the meeting was opened for questions or comments, Warren Anderson, CEO of Financial 2000 in Redlands, said the way the program is structured is reminiscent of the subprime crisis –*

*which attracted young people with no experience in the mortgage world to put people into loans the consumer did not understand – and that makes him nervous.*

*Tami Fleming-Maio said she is concerned because the program that's supposed to serve cash-strapped people relies on Fannie Mae or Freddie Mac-backed loans to refinance or sell their home.*

*With respect to the contractors, and representations made to homeowners, Ramirez described the inquiry as a criminal investigation. Asked to clarify, he said the Contractors State Licensing Board submitted a report to the district attorney's office for review.*

*Because the program is linked to a government entity, Ramirez said, the program should be held to a higher standard. "Government is there to protect its citizens," he said. "My questions are more systemic: What are the checks and balances?"*

<http://www.pe.com/articles/program-768927-hero-ramirez.html>



## Some Homeowners Looking to Move Must Deal With a Change of PACE

Lisa Halverstadt | June 22, 2015

*That's forced some homeowners in places like western Riverside County, where one popular PACE program is more established, to pay tens of thousands of dollars to unburden themselves of PACE loans so they can sell their homes, and even [scuttled some sales](#).*

*[Riverside County](#), where the program's growing, offers lessons for San Diego.*

*The Inland Valleys Association of Realtors estimates about one in 12 properties in western Riverside County has relied on PACE for green projects since the program debuted there three years ago.*

*"It's muddling the real estate transactions now," said Mission Viejo-based broker Eileen Oldroyd, who also works in Riverside County. "It's not exactly operating the way that we're told it's going to operate, that it's easy to transfer the loan to a buyer and it's easy to refinance. That's not true."*

*Oldroyd said one of her clients was forced to pay off a \$20,000 PACE loan in full last year before he could move.*

<http://www.voiceofsandiego.org/topics/science-environment/some-homeowners-looking-to-move-must-deal-with-a-change-of-pace/>



## City Officials Warned About Energy Program: Miss One Payment, Lose Your Home

From STAFF REPORTS  
Published : Monday, June 16, 2014 | 4:13 AM

---

*Los Angeles County Supervisor Michael D. Antonovich has sent an open letter to Pasadena City Manager Michael Beck cautioning the latter of an approved energy program with alleged relatively high interest rates and administrative fees that may result to the foreclosure of properties among homeowners.*

*Antonovich said in the letter dated May 28 that the provisions in the Home Energy Renovation Opportunity/Property Accessed Clean Energy (HERO/PACE) program is incompatible with the standards of the Federal Housing Finance Agency.*

*“The county recently approved a program, which I voted against, to provide loans to homeowners for home energy efficiency upgrades,” Antonovich said in the letter. “It sounds reasonable until you read the fine print. Homeowners can lose their homes with just one missed payment.”*

*Antonovich said that unlike taxes due to a municipal agency which cannot initiate a tax sale until taxes have not been paid for five years, the bondholders of the HERO/PACE loans are able to initiate foreclosure proceedings after missing one payment, and no provisions are available for making a repayment plan.*

*The county supervisor added that the program’s historical loan interest rate of nine percent on a 20-year loan, with an additional seven percent administrative fee on closing is “much higher than equity lines of credit for homeowners.”*

<http://www.pasadenanow.com/main/city-officials-warned-about-energy-program-miss-one-payment-lose-your-home/#.VtCBVeY714w>



## **MORENO VALLEY: Homebuyer files lawsuit over HERO-financed transaction**

*Moreno Valley homebuyer files lawsuit over HERO-financed transaction; Realtors say lawsuit illustrates hurdles Realtors, buyers and sellers face at point-of-sale for energy-upgrade assessments.*

*When Esther Kemmerer agreed to pay \$345,000 for a clear title on a house in Moreno Valley in April 2013, she claims she got more than a property with energy-efficient amenities.*

*Kemmerer got embroiled in a civil lawsuit accusing the seller and others who handled the all-cash sale of failing to disclose and pay off a \$28,675 property tax assessment for HERO-financed windows and doors that could grow to \$59,431 over 20 years.*

*The case could be the tip of an iceberg, Inland Southern California real estate professionals say.*

*“We anticipated at some point this would happen,” said Paul Herrera, government affairs director for Inland Valleys, California Desert and Inland Gateway associations of Realtors. “We’ve seen threats where this will happen in the middle of a transaction. It’s not a surprise.”*

*<http://www.pe.com/articles/hero-761687-realtors-property.html>*