Memorandum

TO: Senator Winfield and Representative Reed and Members of the Joint Committee on Energy and Technology

FROM: Jonathan Anderson, Vice President and Chief Underwriting Counsel, CATIC

RE: Raised Bill No. 973, An Act Concerning A Residential Sustainable Energy Program

DATE: March 7, 2017

This is testimony in opposition of Raised Bill No. 973, An Act Concerning A Residential Sustainable Energy Program. The proposal expands the scope of an existing statute, Section 7-121n, to go well beyond its original goal of encouraging the installation of renewable energy or energy saving systems. The proposal even goes well beyond encouraging the installation of energy systems that its title suggests, to include asbestos, mold and lead remediation as well as flood and hurricane resistant construction. CATIC is certainly in favor of making residential homes safer and more energy efficient. CATIC is opposed, however, to the ways in which this proposal seeks to accomplish its expansive mandate.

The biggest problems with this proposal can be summarized as follows:

- It creates liens for energy assessments having the same super-priority as municipal tax liens; and
- Like municipal tax liens, these assessments and liens can exist in unrecorded form

This proposal amends the existing statutory program, where municipalities use public funding derived from bond issues to finance the purchase and installation of energy improvements on qualifying residential or non-residential property. The proposal makes the Connecticut Green Bank the administrator for purposes of establishing a residential sustainable energy program and serving "as an aggregate entity for the purpose of securing state and private third - party funding (emphasis added) for qualifying residential real property."

As a means of attracting private capital to finance the wide-ranging projects envisioned in the bill, this proposal authorizes the use of super-priority assessment liens against the residential property that benefits from the private capital. In addition, when an energy assessment lien is assigned to the third party capital provider or any other private party, that private party would have rights similar to a municipality and its tax collector with regard to the priority of that lien.

An essential element of the free enterprise system is the concept of assuming some investment risk for the potential of a greater investment return. This proposal, by contrast, appears to remove much of the risk of private investment by allowing the private party to enjoy the advantages of super-priority liens. Unfortunately, the favoritism shown to the Connecticut Green Bank, its private capital providers, or the lien assignees in this proposal comes at the expense of practically everyone else who deals with the affected real estate.

A necessary part of performing due diligence whenever someone is buying, leasing or mortgaging real property is examining the land records of the town where the real estate is located. Those involved in commerce understand the importance of the land record system in Connecticut, where, with very limited exceptions, the order of recording an instrument determines the rights of the party claiming an interest by virtue of that instrument. This modified "first in time, first in right" priority rule provides certainty and reliability. Those liens with true super-priority, that is, those having priority over any previously recorded lien or encumbrance, have heretofore been limited to tax liens and liens for the recovery of purely public expenditures.

The proposal itself recognizes some of the risks to the property owner in that portion of the bill requiring disclosures when the owner seeks to participate in the sustainable energy program. These risks include but are not limited to the likely requirement that the assessment be paid in full when an existing mortgage is refinanced or the subject property is sold.

But the risks to the property owner are not the only risks associated with this bill. A lender who places a mortgage on the property in March can have that mortgage trumped by an October energy assessment lien. A lender asked to refinance a mortgage or finance a purchase will face uncertainty and risk when confronted with the prospect of being subject to a super-priority energy assessment lien in the future.

The proposal envisions a system where the Connecticut Green Bank and qualifying property owners enter into a contract where funds are provided to spend on qualifying improvements. The contract requires the property owner to pay back the funds with interest. Despite the revised terminology used in the proposal, these are energy loans that are secured by a consensual lien on the affected real estate. These liens should therefore be treated and follow the same rules as any other mortgage to secure the repayment of a loan. They should not, however, be given special treatment simply because they are called benefit assessments.

The proposal is also unclear about whether the lien is effective prior to recording. While recording is envisioned under the proposal, the language giving the benefit assessment the same "dignity and treatment" as a municipal tax assessment appears to make any lien effective as of the date of the assessment. This would make the lien effective prior to recording, making the

proposal even more disruptive to those who must rely on the land records to determine the status of title for any given parcel of real property.

The existing Section 7-121n of the Connecticut General Statutes authorizes the municipality to place a contractual assessment on the qualifying real estate. These assessments constitute a lien, but the lien does not have priority over any prior mortgage. Existing law also allows the property owner to seek private financing through traditional capital providers such as banks through the use of home improvement loans, home equity loans and lines of credit secured by a mortgage.

Even if there is a perceived need to change Section 7-121n, there is no justification for a proposal to alter the protections and procedures provided by traditional priority rules and a robust system of public notice and shift it entirely onto the shoulders of those who have prior interests in the land or who must reasonably rely on the land records for information regarding the real estate.

For all of the reasons stated in this testimony, CATIC strongly opposes the proposed legislation, Raised Bill 973, in its present form.

Respectfully Submitted,

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CATIC