

# SENATE BILL REPORT

## E2SHB 2405

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As of February 26, 2020

**Title:** An act relating to commercial property assessed clean energy and resilience.

**Brief Description:** Concerning commercial property assessed clean energy and resilience.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Duerr, Barkis, Fitzgibbon, Shewmake, Hoff, Kloba, Corry, Gildon, Ybarra, Jenkin, Pollet and Doglio).

**Brief History:** Passed House: 2/18/20, 93-4.

**Committee Activity:** Environment, Energy & Technology: 2/25/20.

### Brief Summary of Bill

- Requires the Department of Commerce to establish a voluntary statewide commercial property assessed clean energy and resiliency program that counties may choose to participate in.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Greg Vogel (786-7413)

**Background:** Property Assessed Clean Energy Programs. Property Assessed Clean Energy (PACE) programs provide a financing mechanism to encourage the installation of renewable energy systems and energy efficiency improvements on residential, industrial, or commercial properties. PACE programs exist for both residential properties, commonly referred to as Residential PACE or R-PACE, and commercial properties, commonly referred to as Commercial PACE or C-PACE.

Eligible improvements frequently include installation of solar photovoltaic system (PV) or solar thermal panels, high performance air conditioning, and insulation. PACE programs are designed to help property owners with up-front energy equipment and installation costs by allowing them to borrow money. Both commercial and residential PACE programs allow a property owner to finance the up-front cost of energy or other eligible improvements on a property and, then pay the costs back over time through a property assessment.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Special Assessments. Special assessments, or benefit assessments, may be imposed on benefitted property to pay for local improvements or to finance their activities and public facilities. Special assessments are not property taxes, but rather special charges created to recover funds paying for services or improvements that have a particular direct benefit to land and their owners. Unlike property taxes that are based on the assessment value of the property, special assessments are generally determined by an assessment plan that is meant to charge amounts to a parcel of property reflecting the actual benefit the property will receive. These assessments are usually based on a flat-fee per parcel, an amount per acre, or a combination of characteristics. Properties may typically be charged different amounts if it is found different classes of property benefit in different ways. Special assessments are not subject to the same limitations and procedures governing property tax levies.

**Summary of Bill:** The Department of Commerce (Commerce) must establish a voluntary statewide commercial property assessed clean energy and resiliency (C-PACER) program that counties may choose to participate in. Eligible properties include privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units.

Commerce must administer the program by:

- making any services that Commerce may choose to offer to property owners, such as estimating energy savings, overseeing project development, or evaluating alternative equipment installations, priced separately and open to purchase by the property owner from qualified third-party providers;
- making any properties available to receive impartial terms from all interested and qualifying capital providers;
- allowing financial underwriting and evaluation to be performed by capital providers; and
- working in a collaborative working group process to develop the program guidebook and other forms.

Commerce may establish uniform statewide criteria for which projects qualify due to their public benefit for participation in C-PACER programs, including but not limited to criteria for measuring and determining if investments in energy will:

- reduce greenhouse gas emissions;
- be cost-effective for reducing energy demand or replacing nonrenewable energy with renewable energy;
- be appropriate to meet seismic risks for each region of the state and type of structure;
- reduce stormwater or pollution; or
- reduce the risk of wildfire, flooding, or other natural or human-caused disaster.

Commerce must prepare a program guidebook that counties can adopt and amend as necessary. The guidebook must include at minimum:

- sample forms for bilateral or triparty contracts, between Commerce, the property owner, and the capital provider which details the obligation for repayment in accordance with the terms of:
  - a C-PACER lien; and
  - the C-PACER financing provided by the capital provider;

- a statement that the period of the financing agreement will not exceed the useful life of the qualified project;
- a description of the application process and eligibility requirements of the program;
- a statement explaining the lender consent requirement;
- a statement explaining the application review process;
- a description of marketing and participant education services to be provided for the program; and
- a statement specifying that the county has no liability as a result of the agreement.

Commerce must establish a C-PACER application and review process to review and evaluate project applications for C-PACER financing. At a minimum, an applicant must demonstrate:

- that the project provides a benefit to the public, in the form of energy or water resource conservation, reduced public health risk, or reduced public emergency response risk; and
- for an existing building:
  - certification that the proposed improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water; or
  - certification that the improvement will result in improved resilience; and
- for new construction, certification that the improvement will enable the project to exceed the energy or water efficiency or renewable energy or water or resilience requirements of the current building code.

As part of the application, the applicant must also provide a copy of the ordinance or resolution by the county approving C-PACER financing for an area within the county.

Commerce may charge an application fee to cover the costs of the review process.

After a project is completed, the applicant must provide Commerce with verification that the improvement was properly completed and is operating as intended.

Commerce must begin accepting applications July 1, 2021.

To adopt a C-PACER program, a county must take the following actions:

- adopt a resolution or ordinance that includes:
  - a statement that financing qualified projects is in the public interest for safety, health, or common good reasons; and
  - a description of the region in which the program is offered; and
- hold a public hearing on the proposed program.

A county adopting a C-PACER program may narrow the definition of "qualified improvements" to be consistent with the county's climate goals.

A county must record each C-PACER lien in the real property records of the county in which the property is located.

The C-PACER lien takes precedence over all other liens except a lien for taxes imposed by the state, a local government, or a junior taxing district, provided existing security interest holders have provided written consent.

For the owner of a multifamily residential real property with five or more dwelling units, Commerce must also receive written consent from any and all holders of affordable housing covenants, restrictions, or regulatory agreements.

The C-PACER lien runs with the land, and that portion of the lien that has not yet become due is not accelerated or eliminated by foreclosure.

After the expiration of one year from the date of delinquency, the capital provider may foreclose and enforce the lien by a civil action in the court having jurisdiction.

The capital provider may sell or assign, for consideration, any and all liens received from the participating county.

C-PACER financing may include:

- the cost of materials and labor;
- permit fees;
- lender's fees;
- application and administrative fees;
- project development and engineering fees;
- third-party review fees;
- capitalized interest;
- interest reserves;
- escrow for prepaid property taxes and insurance; or
- any other fees or costs incident to the installation, modification, or improvement.

A county may not enforce any privately financed debt and may not pledge, offer, or encumber the full faith and credit of the county. Neither the state nor any county may use public funds to fund or repay any loan between a capital provider and the property owner.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: As an architect excited about the possibilities of allowing building owners to upgrade their buildings, this is a great bill. There is no more environmentally sustainable building than an existing building, but the ability to upgrade the building takes it to the next level. This would be a great tool to allow building owners to do this. The ability to get a long-term loan that stays with the property really opens up the ability to do this. These improvements could also potentially address unreinforced masonry buildings.

Many of these buildings need these improvements but many owners are unwilling to pay for the costs. Financing these improvements could make properties more valuable and improve the health and welfare of occupants. The bill is fairly different as originally structured. In particular, the version takes a lot away from the role of the county, particularly collection and enforcement.

Property owners are in need of some new financing mechanisms to enable them to comply with energy efficiency mandates put upon them and make progress toward state energy efficiency and carbon reduction goals. The engrossed house version is not quite there yet—there are certain things needed to make this bill attractive to capital providers.

Upgrading the built environment is critical to climate change mitigation. Architects are keenly aware that buildings represent 30 percent greenhouse gas emissions in Washington.

OTHER: We hope that you will approve a version that looks more like the original. Commerce feels that the appropriate place to run programs like this is at the local level. The house version places this role inappropriately at the state level. We are willing to help in developing a guide book but hope that you will not put the entire responsibility of the program on Commerce.

**Persons Testifying:** PRO: Representative Davina Duerr, Prime Sponsor; Phyllis Farrell, Washington League of Women; Amy Wheelless, NWECA; Barb Graff, Emergency Managers Association; Rod Kaufman, Building Owners and Managers Association; Erik Makinson, Resource Synergy; Michael Yaki, PACE Lenders; Kirsten Smith, AIA; Court Olson, Shift Zero; Lisa Parshley, Olympia City Council.

OTHER: Glenn Blackmon, Washington Department of Commerce—State Energy Office.

**Persons Signed In To Testify But Not Testifying:** No one.