

E2SHB 2405 - S COMM AMD

By Committee on Environment, Energy & Technology

ADOPTED AND ENGROSSED 3/5/20

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the
4 efficiency and resiliency of buildings in Washington is essential for
5 ensuring the health and safety of residents, employees, and tenants;
6 for using water and energy more efficiently; and for economic
7 development of our communities. Buildings in Washington have
8 significant needs for resiliency retrofits, including seismic
9 improvements, stormwater management, flood mitigation, wildfire and
10 wind resistance, and for clean energy and energy efficiency
11 improvements, but these improvements often have high up-front capital
12 costs.

13 (2) This chapter authorizes the establishment of a commercial
14 property assessed clean energy and resiliency ("C-PACER") program
15 that jurisdictions can voluntarily implement to ensure that free and
16 willing owners of agricultural, commercial, and industrial properties
17 and of multifamily residential properties with five or more dwelling
18 units can obtain low-cost, long-term financing for qualifying
19 improvements, including energy efficiency, water conservation,
20 renewable energy, and resiliency projects. These improvements are
21 repaid by a voluntary assessment on the property, secured by a county
22 lien, and assigned to a capital provider for all the administrative
23 aspects of billing, collecting, and enforcing the lien and without
24 the accumulation of cost to the county and without the creation of a
25 personal debt obligation to the property owner. The obligation is
26 instead carried by the property and remains with the property until
27 repaid, regardless of any potential transfer of property ownership.
28 After the adoption of a C-PACER program, a county's role is limited
29 to the approval of an assessment and recordation of a C-PACER lien,
30 and administration of the C-PACER program which may be contracted out
31 to a private third party.

1 (3) The legislature declares that the establishment and operation
2 of a C-PACER program under this chapter serves important public
3 health and safety interests. A qualified improvement as defined in
4 section 2 of this act provides benefit to the public, either in the
5 form of energy or water resource conservation, reduced public health
6 risk, or reduced public emergency response risk. Accordingly, the
7 governing body of a county is authorized to determine that it is
8 convenient and advantageous to adopt a program under this chapter.

9 NEW SECTION. **Sec. 2.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires
11 otherwise.

12 (1) "Assessment" means the voluntary agreement of a property
13 owner to allow a county to place an annual assessment on their
14 property to repay C-PACER financing.

15 (2) "Capital provider" means any private entity, their designee,
16 successor, and assigns that makes or funds C-PACER financing under
17 this chapter.

18 (3) "C-PACER financing" means an investment from a capital
19 provider to a property owner to finance or refinance a qualified
20 project as described under this chapter.

21 (4) "C-PACER lien" means the lien recorded at the county on the
22 eligible property to secure the voluntary annual assessment, which
23 remains on the property until paid in full.

24 (5) "Eligible property" means privately owned commercial,
25 industrial, or agricultural real property or multifamily residential
26 real property with five or more dwelling units. Eligible property may
27 be owned by any type of business, corporation, individual, or
28 nonprofit organization permitted by state law.

29 (6) "Financing agreement" means the contract under which a
30 property owner agrees to repay a capital provider for the C-PACER
31 financing including, but not limited to, details of any finance
32 charges, fees, debt servicing, accrual of interest and penalties, and
33 any terms relating to treatment of prepayment and partial payment of
34 the C-PACER financing.

35 (7) "Program" means a C-PACER program established under this
36 chapter.

37 (8) "Program administrator" means the party designated by a
38 county or the department of commerce to administer a C-PACER program.
39 This may be the department of commerce, the county itself, or a third

1 party, provided that the administration procedures used conform to
2 the requirements of this chapter.

3 (9) "Program guidebook" means a comprehensive document that
4 illustrates the applicable region for a program and establishes any
5 appropriate guidelines, specifications, underwriting and approval
6 criteria, and any standard application forms consistent with the
7 administration of a program and not detailed in this chapter.

8 (10) "Project application" means an application submitted to a
9 program to demonstrate that a proposed project qualifies for C-PACER
10 financing and for a C-PACER lien.

11 (11) "Qualified improvement" means a permanent improvement
12 affixed to real property and intended to: (a) Decrease energy
13 consumption or demand through the use of efficiency technologies,
14 products, or activities that reduce or support the reduction of
15 energy consumption, allow for the reduction in demand, or support the
16 production of clean, renewable energy, including but not limited to a
17 product, device, or interacting group of products or devices on the
18 customer's side of the meter that generates electricity, provides
19 thermal energy, or regulates temperature; (b) decrease water
20 consumption or demand and address safe drinking water through the use
21 of efficiency technologies, products, or activities that reduce or
22 support the reduction of water consumption, allow for the reduction
23 in demand, or reduce or eliminate lead from water which may be used
24 for drinking or cooking; or (c) increase resilience, including but
25 not limited to seismic retrofits, flood mitigation, stormwater
26 management, wildfire and wind resistance, energy storage, and
27 microgrids.

28 (12) "Qualified project" means a project approved by the program
29 administrator, involving the installation or modification of a
30 qualified improvement, including new construction or the adaptive
31 reuse of eligible property with a qualified improvement.

32 (13) "Region" means a geographical area as determined by a county
33 pursuant to section 4 of this act.

34 NEW SECTION. **Sec. 3.** (1) (a) The department of commerce may
35 establish a voluntary statewide C-PACER program that counties may
36 choose to participate in. A county may establish a separate voluntary
37 countywide C-PACER program, provided that it conforms to the
38 requirements of this chapter.

1 (b) A C-PACER program shall be managed efficiently and
2 transparently, including by:

3 (i) Making any services that the program may choose to offer to
4 property owners, such as estimating energy savings, overseeing
5 project development, or evaluating alternative equipment
6 installations, priced separately and open to purchase by the property
7 owner from qualified third-party providers;

8 (ii) Making any properties participating in the program available
9 to receiving impartial terms from all interested and qualifying
10 third-party capital providers;

11 (iii) Allowing financial underwriting and evaluation to be
12 performed by capital providers; and

13 (iv) Working in a collaborative working group process with
14 capital providers and other stakeholders to develop the program
15 guidebook and any other relevant documents or forms.

16 (2) The program shall establish uniform criteria for which
17 projects qualify due to their public benefit for participation in C-
18 PACER programs including, but not limited to, criteria for measuring
19 or determining if investments in energy will reduce greenhouse gas
20 emissions; be effective for reducing energy demand or replacing
21 nonrenewable energy with renewable energy; will be appropriate to
22 meet seismic risks for each region of the state and type of
23 structure; will reduce stormwater or pollution to be significant
24 public benefit; or will reduce the risk of wildfire, flooding, or
25 other natural or human-caused disaster, including how to determine if
26 the public benefit in reduced public risk and emergency response
27 qualifies for inclusion in C-PACER programs.

28 (3) The program must prepare a program guidebook that must
29 include at minimum:

30 (a) A sample form bilateral or triparty agreement or agreements,
31 as appropriate, between a county, the property owner, and the capital
32 provider which details the agreement between the county and the
33 property owner to have an assessment placed on the qualified property
34 as repayment for C-PACER financing; an agreement by the county to
35 place a lien on the property to secure the obligation to repay; the
36 obligation of the property owner to repay the C-PACER financing to
37 the capital provider; and an assignment of the C-PACER lien by the
38 county to the capital provider;

39 (b) A statement that the period of the financing agreement will
40 not exceed the useful life of the qualified project, or weighted

1 average life if more than one qualified improvement is included in
2 the qualified project, that is the basis for the financing agreement;

3 (c) A description of the application process and eligibility
4 requirements for participation in the program;

5 (d) A statement explaining the lender consent requirement
6 provided in section 8 of this act;

7 (e) A statement explaining the review requirement provided by
8 section 4 of this act;

9 (f) A description of marketing and participant education services
10 to be provided for the program;

11 (g) A statement specifying that the county has no liability as a
12 result of the agreement; and

13 (h) A program guidebook need not be completed and adopted prior
14 to accepting and approving applications by a program, so long as the
15 program complies with the provisions of this chapter.

16 (4) The program administrator must make the program guidebook
17 available for public inspection on the county's or department of
18 commerce's web site.

19 (5) A county or the department of commerce may contract out the
20 responsibilities of program administration, including the
21 responsibilities of this section, to a public, quasi-public, or
22 private third-party entity.

23 (6) Any county program guidebook established prior to a statewide
24 program may subsequently include or incorporate by reference any
25 aspect of a statewide program guidebook; however, upon development of
26 a statewide program guidebook with a form agreement or agreements
27 developed pursuant to subsection (3)(a) of this section, the form
28 agreement or agreements shall be required to be used by all county
29 programs from the time that the first C-PACER lien is recorded under
30 the statewide program, or the department of commerce may incorporate
31 by reference any portion of any county program guidebooks, including
32 a form agreement or agreements, as its program guidebook.

33 (7) The department of commerce may provide grants to counties to
34 assist in the design and implementation of C-PACER programs under
35 this chapter.

36 NEW SECTION. **Sec. 4.** (1) A program must establish a C-PACER
37 application and review process to review and evaluate project
38 applications for C-PACER financing, and prescribe the form and manner
39 of the application. At a minimum, an applicant must demonstrate:

1 (a) That the project provides a benefit to the public, in the
2 form of energy or water resource conservation, reduced public health
3 risk, or reduced public emergency response risk;

4 (b) For an existing building: (i) Where energy or water usage
5 improvements are proposed, certification by a licensed professional
6 engineer, or other professional listed in the program guidebook,
7 stating that the proposed qualified improvements will either result
8 in more efficient use or conservation of energy or water, the
9 reduction of greenhouse gas emissions, or the addition of renewable
10 sources of energy or water, or (ii) where resilience improvements are
11 proposed, certification by a licensed professional engineer stating
12 that the qualified improvements will result in improved resilience;

13 (c) For new construction, certification by a licensed
14 professional engineer stating that the proposed qualified
15 improvements will enable the project to exceed the energy efficiency
16 or water efficiency or renewable energy or renewable water or
17 resilience requirements of the current building code.

18 (2) The program may charge an application fee to cover the costs
19 of establishing and conducting the application review process.

20 (3) Upon the denial of an application, the program administrator
21 must provide an opportunity for an adjudicative proceeding subject to
22 the applicable provisions of chapter 34.05 RCW.

23 (4) After an approved project is completed, an applicant must
24 provide the program written verification, as defined in the program
25 guidebook, stating that the qualified project was properly completed
26 and is operating as intended.

27 (5) No later than one year after the governing body of a county
28 establishes a program under this chapter, it must begin accepting
29 applications and approving applications.

30 (6) The department of commerce may adopt rules to implement the
31 voluntary statewide program.

32 NEW SECTION. **Sec. 5.** (1) To adopt a program under this chapter,
33 the governing body of a county must take the following actions:

34 (a) Adopt a resolution or ordinance that includes:

35 (i) A statement that financing qualified projects, repaid by
36 voluntary assessments on property benefited by C-PACER improvements,
37 is in the public interest for safety, health, and other common good
38 reasons;

1 (ii) A description of the region in which the program is offered,
2 which:

3 (A) May include the entire county, which may include both
4 unincorporated and incorporated territory; and

5 (B) Must be located wholly within the county's jurisdiction; and

6 (iii) A statement of the time and place for a public hearing on
7 the proposed program; and

8 (b) Hold a public hearing at which the public may comment on the
9 proposed program.

10 (2) A county may designate more than one region. If multiple
11 regions are designated, the regions may be separate, overlapping, or
12 coterminous.

13 (3) The resolution or ordinance adopted by a county under this
14 section may incorporate the department of commerce program guidebook
15 or any amended versions of that program guidebook, as appropriate, by
16 reference.

17 (4) A county adopting a C-PACER program pursuant to this chapter
18 may narrow the definition of "qualified improvements" to be
19 consistent with the county's climate goals.

20 (5) Any combination of counties may agree to jointly implement a
21 program under this chapter. If two or more counties implement a
22 program jointly, a single public hearing held jointly by the
23 cooperating counties is sufficient to satisfy the requirements of
24 this chapter.

25 (6) If a county elects to join the statewide program administered
26 by the department of commerce, it may adopt a resolution or ordinance
27 in accordance with the requirements of the department.

28 (7) In lieu of establishing a voluntary statewide program, the
29 department of commerce may produce a program guidebook for reference
30 and use by county programs.

31 NEW SECTION. **Sec. 6.** (1) A county shall record each C-PACER
32 lien in the real property records of the county in which the property
33 is located. The lien and release shall be prepared in conformity with
34 chapter 65.04 RCW.

35 (2) The recording under subsection (1) of this section must
36 contain:

37 (a) The legal description of the eligible property;

38 (b) The assessor's parcel number of the property;

1 (c) The grantor's name, which must be the same as the property
2 owner on the assessment agreement;

3 (d) The grantee's name, which must be the county in which the
4 property is located;

5 (e) The date on which the lien was created;

6 (f) The principal amount of the lien;

7 (g) The terms and length of the lien; and

8 (h) A copy of the voluntary assessment agreement between the
9 county and the property owner.

10 (3) The county shall also record the assignment of the C-PACER
11 lien from the county to the appropriate capital provider.

12 (4) The lien holder or assignee will record a release upon
13 discharge of the lien. The lien holder may also record a partial
14 release.

15 NEW SECTION. **Sec. 7.** (1) The C-PACER lien amount plus any
16 interest, penalties, and charges accrued or accruing on the C-PACER
17 lien:

18 (a) Takes precedence over all other liens or encumbrances except
19 a lien for taxes imposed by the state, a local government, or a
20 junior taxing district on real property, which liens for taxes shall
21 have priority over such benefit C-PACER lien, provided existing
22 mortgage holders, if any, have provided written consent described in
23 section 8 of this act; and

24 (b) Is a first and prior lien, second only to a lien for taxes
25 imposed by the state, a local government, or a junior taxing district
26 against the real property on which the C-PACER lien is imposed, from
27 the date on which the notice of the C-PACER lien is recorded until
28 the C-PACER lien, interest, penalties, and charges accrued or
29 accruing are paid.

30 (2) The C-PACER lien runs with the land, and that portion of the
31 C-PACER lien that has not yet become due is not accelerated or
32 eliminated by foreclosure of the C-PACER lien or any lien for taxes
33 imposed by the state, a local government, or junior taxing district
34 against the real property on which the C-PACER lien is imposed.

35 (3) Delinquent installments due on a C-PACER lien incur interest
36 and penalties as specified in the financing agreement.

37 (4) After the C-PACER lien is recorded as provided in this
38 section, the voluntary assessment and the C-PACER lien may not be

1 contested on the basis that the improvement is not a qualified
2 improvement or that the project is not a qualified project.

3 (5) Collection and enforcement of delinquent C-PACER liens or C-
4 PACER financing installment payments, including foreclosure, shall
5 remain the responsibility of the capital provider.

6 (6) The C-PACER lien shall be enforced by the capital provider at
7 any time after one year from the date of delinquency in the same
8 manner that the collection of delinquent real property taxes is
9 enforced by the county under chapter 84.64 RCW, including the
10 provisions of RCW 84.64.040, excepting that a sworn declaration by
11 the capital provider or assignee attesting to the assessment
12 delinquency of at least one year shall be used in lieu of the
13 certificate required under RCW 84.64.050.

14 (7) The capital provider may sell or assign, for consideration,
15 any and all liens received from the participating county. The capital
16 provider or their assignee shall have and possess the same powers and
17 rights at law or in equity to enforce the C-PACER lien in the same
18 manner as described in subsection (6) of this section.

19 NEW SECTION. **Sec. 8.** (1) Before a capital provider may enter
20 into a financing agreement to provide C-PACER financing of a
21 qualified project to a record owner of any eligible property, the
22 capital provider must receive written consent from any holder of a
23 lien, mortgage, or security interest in the real property that the
24 property may participate in the program and that the C-PACER lien
25 will take precedence over all other liens except for a lien for taxes
26 as described in section 7 of this act.

27 (2) Before a capital provider may enter into a financing
28 agreement to provide C-PACER financing of a qualified project to the
29 record owner of any multifamily residential real property with five
30 or more dwelling units, the program administrator must also receive
31 written consent from any and all holders of affordable housing
32 covenants, restrictions, or regulatory agreements in the real
33 property that the property may participate in the program and that
34 the C-PACER lien will take precedence over all other liens except for
35 a lien for taxes as described in section 7 of this act.

36 NEW SECTION. **Sec. 9.** The C-PACER financing through a program
37 established under this chapter may include:

- 1 (1) The cost of materials and labor necessary for installation or
- 2 modification of a qualified improvement;
- 3 (2) Permit fees;
- 4 (3) Inspection fees;
- 5 (4) Lender's fees;
- 6 (5) Program application and administrative fees;
- 7 (6) Project development and engineering fees;
- 8 (7) Third-party review fees, including verification review fees;
- 9 (8) Capitalized interest;
- 10 (9) Interest reserves;
- 11 (10) Escrow for prepaid property taxes and insurance; or
- 12 (11) Any other fees or costs that may be incurred by the property
- 13 owner incident to the installation, modification, or improvement on a
- 14 specific or pro rata basis.

15 NEW SECTION. **Sec. 10.** The proposed C-PACER financing for a

16 qualified project may authorize the property owner to:

- 17 (1) Purchase directly the related equipment and materials for the
- 18 installation or modification of a qualified improvement; and
- 19 (2) Contract directly, including through lease, power purchase
- 20 agreement, or other service contract, for the installation or
- 21 modification of a qualified improvement.

22 NEW SECTION. **Sec. 11.** A county that adopts a program and

23 designates a program region under this chapter may not:

- 24 (1) Make the issuance of a permit, license, or other
- 25 authorization from the county to a person who owns property in the
- 26 region contingent on the person entering into a written contract to
- 27 repay the financing of a qualified project under this chapter; or
- 28 (2) Otherwise compel a person who owns property in the region to
- 29 enter into a written contract to repay the financing of a qualified
- 30 project under this chapter.

31 NEW SECTION. **Sec. 12.** The members of the governing body of a

32 county, employees of a county, and board members, executives, and

33 employees under this chapter are not personally liable as a result of

34 exercising any rights or responsibilities granted under this chapter.

35 NEW SECTION. **Sec. 13.** A county may not enforce any privately

36 financed debt under this chapter. Neither the state nor any county

1 may use public funds to fund or repay any loan between a capital
2 provider and property owner. No section under this chapter shall be
3 interpreted to pledge, offer, or encumber the full faith and credit
4 of a local government, nor shall any local government pledge, offer,
5 or encumber its full faith and credit for any lien amount through a
6 program.

7 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
8 constitute a new chapter in Title 36 RCW."

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9 On page 1, line 2 of the title, after "resilience;" strike the
10 remainder of the title and insert "and adding a new chapter to Title
11 36 RCW."

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