SENATE BILL REPORT
SB 5312

As of January 31, 2023

Title: An act relating to creating a residential property assessed clean energy and resiliency program.

Brief Description: Creating a residential property assessed clean energy and resiliency program.

Sponsors: Senators Lovelett, Wilson, J., Dhingra, Holy, Keiser, Nobles, Randall, Rolfes, Shewmake, Trudeau and Wellman.

Brief History:
Committee Activity: Local Government, Land Use & Tribal Affairs: 1/31/23.

Brief Summary of Bill

- Creates a Residential Property Assessed Clean Energy and Resiliency (R-PACER) Program, financed by capital providers and administered by counties or the Department of Commerce, for energy and resiliency retrofits and new construction.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Staff: Karen Epps (786-7424)

Background: Commercial Property Assessed Clean Energy and Resiliency Program. Legislation passed in 2020 establishing the Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program. The C-PACER program provides a financing mechanism to encourage installation of renewable energy systems and energy efficiency improvements to residential properties. The program authorized the Department of Commerce to establish a voluntary, statewide C-PACER program in which counties may choose to participate, and also authorized counties to establish separate voluntary,

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

countywide C-PACER programs. The C-PACER program allows a property owner to finance the up-front cost of energy or other eligible improvements on a property through a capital provider and then pay the costs back over time through a property assessment.

Eligible Properties and Applicants. Eligible properties include privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units. Criteria for determining an eligible project include whether the project provides a public benefit, including measuring or determining whether such projects will:

- reduce greenhouse gas emissions;
- be effective for reducing energy;
- be appropriate to meet seismic risks;
- reduce stormwater or pollution; or
- reduce the risk of wildfire, flooding, or other natural or human-caused disaster.

Applicants for C-PACER financing must demonstrate at minimum:

- that the project provides a public benefit in the form of energy or water resource conservation, reduced public health risk, or reduced public emergency response risk;
- for an existing building, certification by an engineer or other professional listed in the program guidebook that:
    1. where energy or water usage improvements are proposed, the proposed qualified improvements will result in more efficient use or conservation of energy or water, result in the reduction of greenhouse gas emissions, or result in the addition of renewable sources of energy or water; or
    2. where resilience improvements are proposed, the qualified improvements will result in improved resilience; and
- for new construction, certification by an engineer that the proposed qualified improvements will enable the project to exceed the energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building code.

Commercial Property Assessed Clean Energy and Resiliency Liens. Counties must record C-PACER liens in the real property records of the county. The county must also record the assignment of the C-PACER lien from the county to the appropriate capital provider. A C-PACER lien takes precedence over all other liens or encumbrances except a lien for taxes on the property imposed by the state, a local government, or a junior taxing district. Each C-PACER lien runs with the land, and that portion of the C-PACER lien that has not yet become due is not accelerated or eliminated by foreclosure of a property tax lien.

Billing, collection, and enforcement of a C-PACER lien or C-PACER assessment installments, including foreclosure, is the responsibility of the capital provider. The county must assign the assessment and C-PACER lien to the capital provider at the close of any approved C-PACER financing, and the lien maintains the same precedence and priority. The capital provider must enforce the lien any time after one year from the date of delinquency in the same manner as a mortgage lien. The sale of the property does not discharge or affect the priority of the lien with respect to installments not yet due and payable at the time of sale. The capital provider may not seek a deficiency judgment with respect to any unpaid assessment at the time of sale. A county sheriff may participate in a foreclosure action without violating limitations relating to the role of the county in enforcement of C-PACER liens.

The capital provider may sell or assign for consideration any and all C-PACER liens received from the participating county. Before a capital provider may enter into a financing agreement to provide C-PACER financing of a qualified project, the capital provider must receive written consent from any holder of a lien, mortgage, or security interest in the real property that the property may participate in the program and that the C-PACER lien will take precedence over all other liens except for a lien for taxes imposed by the state, a local government, or junior taxing district.

County Credit. 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.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Residential Property Assessed Clean Energy and Resiliency Program. The Residential Property Assessed Clean Energy and Resiliency (R-PACER) Program is established to provide a financing mechanism to encourage the installation of renewable energy systems and energy efficiency improvements to residential properties. The program authorizes the Department of Commerce to establish a voluntary, statewide R-PACER program in which counties may choose to participate, and also authorized counties to establish separate voluntary, countywide R-PACER programs. The R-PACER program allows a property owner to finance the up-front cost of energy or other eligible improvements on a property through a capital provider and then pay the costs back over time through a property assessment.

Eligible Properties and Applicants. Eligible properties include privately owned single-family residential real property or multifamily residential real property with four or fewer dwelling units. Criteria for determining an eligible project include whether the project provides a public benefit, including measuring or determining whether such projects will:
- reduce greenhouse gas emissions;
- be effective for reducing energy or replacing nonrenewable energy with renewable energy;
- be appropriate to meet seismic risks;
- reduce stormwater or pollution; or
- reduce the risk of wildfire, flooding, or other natural or human-caused disaster.

Applicants for R-PACER financing must demonstrate at minimum:

- that the project provides a public benefit in the form of energy or water resource conservation, reduced public health risk, or reduced public emergency response risk;
- for an existing building, certification by an engineer, registered architect, or other professional listed in the program guidebook that:
  1. where energy or water usage improvements are proposed, the proposed qualified improvements will result in more efficient use or conservation of energy or water, result in the reduction of greenhouse gas emissions, or result in the addition of renewable sources of energy or water; or
  2. where resilience improvements are proposed, the qualified improvements will result in improved resilience; and
- for new construction, certification by an engineer or registered architect that the proposed qualified improvements will enable the project to exceed the energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building code.

At least seven days prior to the R-PACER lien filing date, the capital provider must provide the property owner with a R-PACER disclosure form that has been developed by the participating county. The R-PACER disclosure form must include the date the disclosure form was received by the property owner and be signed by the property owner and notarized. The disclosure form must also include the name, address, and telephone number of the property owner; the capital provider contact name, company name, address, and telephone number; and the property physical address and parcel number, together with the following information, including, but not limited to:

- the total amount being financed with R-PACER financing, first payment information including any closing fees, anticipated last payment date, total financed amount, total amount of interest, total costs, and the interest rate on the loan; and
- an attached itemized estimate showing all costs and contractors' markups and including names and signatures of the licensed and bonded contractors that prepared it, along with the contractors' license numbers, street addresses, and phone numbers.

An informational document prepared by the participating county that provides answers to the following questions in simple lay language must also be provided to the property owner as part of the disclosure form, including, but not limited to:

- What is the R-PACER program and is it free for the applicant?
- How do I qualify and what are the costs for the R-PACER financing?
- What types of home improvements qualify for R-PACER financing?
- What happens if I am not happy with the improvements?
- What happens if I have trouble making the R-PACER loan payments?
- Can I refinance or sell my home while I am still making R-PACER loan payments?

<u>Residential Property Assessed Clean Energy and Resiliency Liens</u>. Counties must record R-PACER liens in the real property records of the county. The county must also record the assignment of the R-PACER lien from the county to the appropriate capital provider. The

capital provider may sell or assign for consideration any and all R-PACER liens received from the participating county. An R-PACER lien takes precedence over all other liens or encumbrances except a lien for taxes on the property imposed by the state, a local government, or a junior taxing district. Each R-PACER lien runs with the land, and that portion of the R-PACER lien that has not yet become due is not accelerated or eliminated by foreclosure of a property tax lien.

Billing, collection, and enforcement of a R-PACER lien or R-PACER assessment installments, including foreclosure, is the responsibility of the capital provider. The county must assign the assessment and R-PACER lien to the capital provider at the close of any approved R-PACER financing, and the lien maintains the same precedence and priority. The capital provider must enforce the lien any time after one year from the date of delinquency in the same manner as a mortgage lien. The sale of the property does not discharge or affect the priority of the lien with respect to installments not yet due and payable at the time of sale. The capital provider may not seek a deficiency judgment with respect to any unpaid assessment at the time of sale.

Before a capital provider may enter into a financing agreement to provide R-PACER financing of a qualified project, the capital provider must receive written consent from any holder of a lien, mortgage, or security interest in the real property that the property may participate in the program and that the R-PACER lien will take precedence over all other liens except for a lien for taxes imposed by the state, a local government, or junior taxing district. In a foreclosure proceeding, the capital provider may collect delinquent interest and penalties in the manner provided by the financing agreement. A county sheriff may participate in a foreclosure action without violating limitations relating to the role of the county in enforcement of R-PACER liens.

<u>County Credit</u>. 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 On Proposed Substitute: PRO: This bill is an innovate strategy for how to deal with the climate future. This bill will allow residential homeowners to use their real property to carry the loan and because the improvement stays with the home, the loan also stays with the home. There is language in the bill that helps protect county treasurers. This bill will help homeowners and lenders, together with contractors, get projects done. Buildings are a big part of the greenhouse gas emission problem and homes are half of that problem. This bill will help homeowners reduce the carbon footprint of their homes and make other improvements and this bill adds an important tool to help homeowners. Homeowners are eager to have this sort of financing opportunity made available to them.

OTHER: There are concerns for citizens who are trying to refinance or purchase properties with a loan like this because the Federal Housing Finance Administration has prohibited Fannie Mae and Freddie Mac, as well as FHA and VHA loans, from backing a loan that has a PACE loan on the property. This creates a number of challenges for folks refinancing or purchasing a home. It would also be necessary to subordinate the lien position and ensure robust consumer protections in the bill.

Persons Testifying: PRO: Senator Liz Lovelett, Prime Sponsor; Jeff Gadman, WA Association of County Officials / WA State Association of County Treasurers; Court Olson.

OTHER: Joe Adamack, Washington's Credit Unions - GWCUA.

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