

FINAL BILL REPORT

E2SHB 2405

C 27 L 20
Synopsis as Enacted

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).

House Committee on Local Government
House Committee on Appropriations
Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means

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. Property Assessed Clean Energy 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 thermal panels, high efficiency air conditioning, and insulation. 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.

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 to pay 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 that reflect 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 in different amounts if it is found that different classes of

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property benefit in different ways. Special assessments are not subject to the same limitations and procedures that govern property tax levies.

Summary:

The Department of Commerce (Commerce) may establish a voluntary statewide C-PACER program in which counties may choose to participate. Counties may also establish separate voluntary countywide C-PACER programs. Eligible properties include privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units.

The program must be managed efficiently and transparently and must establish uniform criteria for which projects qualify due to their public benefit for participation in C-PACER programs, including criteria for measuring or determining if investments in energy 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.

The program must also prepare a program guidebook that must include at minimum:

- a sample form bilateral or tri-party agreement or agreements between a county, the property owner, and the capital provider;
- a statement that the period of the financing agreement will not exceed the useful life of the qualified project that is the basis for the financing agreement;
- a description of the application process and the eligibility requirements for participation in the program;
- statement explaining the lender consent requirement;
- a statement explaining the review requirement;
- a description of marketing and participant education services to be provided for in the program; and
- a statement specifying that the county has no liability as a result of the agreement.

A program guidebook need not be completed or adopted prior to accepting and approving applications by a program. The program guidebook must be available for public inspection on the county's or Commerce's website.

A county or Commerce may contract out the responsibilities of program administration to a public, quasi-public, or private third-party entity.

Commerce may provide grants to counties to assist in the design and implementation of C-PACER programs.

A C-PACER program must establish an application and review process to review and evaluate project applications for C-PACER financing and prescribe the form and manner of the application.

Applicants 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.

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

If an application is denied, the program administrator must provide an opportunity for an administrative appeal.

Once an approved project is completed, an applicant must provide the program written verification that the qualified project was properly completed and is operating as intended.

The program must begin accepting and approving applications no later than one year after the program is established.

The Department of Commerce is authorized to adopt rules to implement the voluntary statewide C-PACER program.

In lieu of establishing a voluntary statewide program, Commerce may produce a program guidebook for reference and use by county programs.

To adopt a C-PACER program, a county must hold a public hearing and adopt a resolution or ordinance that includes:

- a statement that financing qualified projects, repaid by voluntary assessments on property benefited by C-PACER improvements, is in the public interest for safety, health, and other common good reasons;
- a description of the region in which the program is offered; and
- a statement of the time and place of the public hearing.

A county may narrow the definition of qualified improvements to be consistent with the county's climate goals.

Counties must record each C-PACER lien 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.

After a C-PACER lien is recorded, the voluntary assessment and the C-PACER lien may not be contested on the basis that the improvement is not a qualified improvement or that the project is not a qualified project.

Collection and enforcement of the C-PACER lien or C-PACER financing installment payments, including foreclosure, is the responsibility of the capital provider. The lien must be enforced by the capital provider at any time after one year from the date of delinquency in the same manner as delinquent property taxes, except that a sworn declaration by the capital provider attesting to the delinquency must be used in lieu of the certificate of delinquency.

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.

For multifamily residential real properties, the C-PACER program administrator must receive written consent from any and all holders of affordable housing covenants, restrictions, or regulatory agreements 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.

Commercial Property Assessed Clean Energy and Resiliency financing may include the cost of materials, permit fees, inspection fees, lender's fees, program 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 other related costs. The financing may authorize the property owner to directly purchase related equipment or materials and to contract directly for the installation or modification of a qualified 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.

Votes on Final Passage:

House	93	4	
Senate	40	7	(Senate amended)
House	93	4	(House concurred)

Effective: June 11, 2020