SENATE BILL REPORT
E2SHB 2405

As Reported by Senate Committee On:
Environment, Energy & Technology, February 27, 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, 2/27/20 [DPA-WM, DNP, w/oRec].

Brief Summary of Amended Bill

- Creates a commercial property assessed clean energy and resiliency (C-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 ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Sheldon, Assistant Ranking Member, Energy & Technology; Das, Hobbs, Liias, McCoy, Nguyen, Rivers, Short, Stanford and Wellman.

Minority Report: Do not pass.
Signed by Senators Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment.

Minority Report: That it be referred without recommendation.
Signed by Senator Brown.

Staff: Greg Vogel (786-7413)

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.

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.

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

A C-PACER program must be managed efficiently and transparently, including by:

- making any services that the program 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 third-party providers;
- making properties available to receiving impartial terms from all interested and qualifying third-party 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 relevant documents.

A capital provider is any private entity, their designee, successor, and assigns that makes or funds C-PACER financing.

The program must 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 or determining if investments in energy will:

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

The program must prepare a program guidebook that includes:

- a sample form bilateral or triparty 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;
- a description of the application process and eligibility requirements for participation;
- a statement explaining the lender consent requirement;
- a statement explaining the review requirement;
- a description of marketing and participant education services to be provided; and
- a statement specifying that the county has no liability as a result of the agreement.

A program guidebook need not be completed and adopted prior to accepting and approving applications by a program.

A county or Commerce may contract out the responsibilities of program administration.

Upon development of a statewide program guidebook with a form agreement or agreements, the form agreement or agreements must be required to be used by all county programs from the time that the first C-PACER lien is recorded under the statewide program.

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

A program must establish a C-PACER application and review process and prescribe the form and manner of application. 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;
- for an existing building:
  - where energy or water usage improvements are proposed, certification that the 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
  - where resilience improvements are proposed, certification stating that the qualified improvements will result in improved resilience; and
- for new construction, certification that the proposed improvements will enable the project to exceed the energy efficiency or water efficiency or renewable energy or renewable water or resilience requirements of the current building code.

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

Denied applications must be provided an opportunity for administrative appeal. After an approved project is completed, an applicant must provide verification that the project was properly completed and is operating as intended. No later than one year after a county establishes a program, it must begin accepting applications and approving applications.

Commerce may adopt rules to implement the statewide program.

To adopt a program, a county must adopt a resolution or ordinance that includes:
- a statement that financing qualified projects, repaid by voluntary assessments, 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 for a public hearing on the proposed program.

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

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

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

The C-PACER lien takes precedence over all other liens or encumbrances except a lien for taxes imposed by the state, a local government, or a junior taxing district. The lien runs with the land, and the portion of the lien that has not yet become due is not accelerated or eliminated by foreclosure.

Collection and enforcement of delinquent C-PACER liens or C-PACER financing installment payments, including foreclosure, remain the responsibility of the capital provider. The lien shall 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 shall be used in lieu of the delinquent property tax certificate.

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

Before a capital provider may enter into an agreement:
- the 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 the C-PACER lien will take precedence over all other liens except those imposed by the state, a local government, or junior taxing district; and
- for multifamily properties, the program administrator must receive consent from any and all holders of covenants, restrictions, or regulatory agreements for the same.

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.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Provides that the Department of Commerce may establish a voluntary statewide C-PACER program that counties may choose to participate in. Allows counties to establish a separate voluntary countywide C-PACER program.
- Specifies that investments in energy be effective for reducing energy demand or replacing nonrenewable energy with renewable energy as applied to the development of program project criteria.
- Requires that the program guidebook include sample form bilateral or triparty agreement or agreements between a county, the property owner, and the capital provider which details the agreement between the county and the property owner to have an assessment placed on the qualified property as repayment for C-PACER financing; an agreement by the county to place a lien on the property to secure the obligation to repay; the obligation of the property owner to repay the C-PACER financing to the capital provider; and an assignment of the C-PACER lien by the county to the capital provider.
- Specifies that a program guidebook need not be completed and adopted prior to accepting and approving applications by a program.
- Allows a county or the Department of Commerce to contract out the responsibilities of program administration to a public, quasi-public, or private third-party entity.
- Requires form agreements developed by the statewide program guidebook be used by all county programs from the time that the first C-PACER lien is recorded under the statewide program.
- Allows the Department of Commerce to provide grants to counties to assist in the design and implementation of C-PACER programs.
- Removes the requirement that written verification that the project was properly completed and is operating as intended be from one or more qualified independent third parties.
- Requires counties to begin accepting and approving applications no later than one year after the governing body of a county establishes a program.
- Requires a county ordinance or resolution adopting a program to include 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.

- Allows the Department of Commerce to produce a program guidebook for reference and use by county programs in lieu of establishing a voluntary statewide program.
- Requires the recording of the C-PACER lien to contain a copy of the voluntary assessment agreement between the county and the property owner, and requires the county to record the assignment of the C-PACER lien from the county to the capital provider.
- Specifies that the portion of a C-PACER lien that has not yet become due is not accelerated or eliminated by foreclosure of the C-PACER lien or any lien for taxes imposed by the state, a local government, or junior taxing district against the real property on which the C-PACER lien is imposed.
- Specifies that the voluntary assessment may not be contested on the basis that the improvement is not a qualified improvement or that the project is not a qualified project.
- Provides that the C-PACER lien shall be enforced by the capital provider at any time after one year from the date of delinquency in the same manner that the collection of delinquent real property taxes is enforced by the county, excepting that a sworn declaration by the capital provider or assignee attesting to the assessment delinquency of at least one year shall be used in lieu of the property tax certificate of delinquency.
- Requires the capital provider to receive written consent from any holder of a lien, mortgage or security interest, and for eligible multifamily properties, the program administrator to receive written consent from any and all holders of affordable housing covenants, restrictions, or regulatory agreements that the property may participate in the program and will take precedence over all other liens except liens by the state, a local government, or a junior taxing district.
- Provides definitions for assessment and program administrator: "Assessment" means the voluntary agreement of a property owner to allow a county to place an annual assessment on their property to repay C-PACER financing; and "program administrator" means the party designated by a county or the Department of Commerce, the county itself, or a third party, provided that the administration procedures conform to the requirements of this chapter.
- Amends the definition of "capital provider" to include their designee, successor, and assigns. Amends "C-PACER financing" to include refinancing of a qualified project.
- Amends "C-PACER lien" to mean the lien recorded at the county on the eligible property to secure the voluntary annual assessment, which remains on the property until paid in full.

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 Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* 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 Wheeless, NWEC; 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.