

# SENATE BILL REPORT

## SB 6222

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As of January 22, 2020

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

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

**Sponsors:** Senators Lovelett, Das, Fortunato, Rivers, Salomon, Warnick, Zeiger, Nguyen, Lias and Hunt.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/22/20.

**Brief Summary of Bill**

- Creates a commercial property assessed clean energy and resiliency program that facilitates a public-private partnership for financing energy efficiency retrofits and new construction.
- Authorizes a capital provider to provide financing for qualifying capital improvements such as energy efficiency, water conservation, renewable energy, and resiliency projects, which are repaid through assessments on property.

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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

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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 Bill:** A Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program is established. This program authorizes counties and private entities to provide financing to property owners. The financing must be used to provide qualified building improvements for eligible properties. Eligible properties include privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units.

"Qualified improvement" means a permanent improvement affixed to real property and intended to:

- decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy, including, but not limited to, a product, device, or interacting group of products or devices on the customer's side of the meter generating electricity, providing thermal energy, or regulating temperature;
- decrease water consumption or demand through the use of efficiency technologies, products, or activities reducing or supporting reduction of water consumption or allowing reduction in demand; or
- increase resilience, including but not limited to, seismic retrofits, flood mitigation, storm water management, wildfire and wind resistance, energy storage, and microgrids.

To establish a C-PACER program, the governing body of a county must adopt a resolution or ordinance and hold a public hearing on the proposed program. The ordinance or resolution must include a statement that:

- financing qualified projects through assessments is in the public interest for safety, health, and other common good reasons;
- the county intends to make assessments to repay C-PACER financing for qualified projects available to owners of eligible property;
- describes the regions in which the program is offered;
- describes how both the county and the capital providers will bill, collect, and remit payments;

- describes the process for creating a program guidebook describing the program and identifying where the program guidebook will be available for public inspection; and
- indicates the time and place for a public hearing on the proposed C-PACER program.

Each county establishing a C-PACER program must prepare a program guidebook including, at minimum a:

- map showing the boundaries of the region;
- a sample contract between the county, the property owner, and the capital provider specifying the terms of an assessment under the program and the C-PACER financing provided by a capital provider;
- a statement identifying an entity authorized to enter into written contracts on behalf of the county;
- a statement that the period of the assessment will not exceed the useful life of the qualified project, or weighted average life if more than one qualified improvement is included in the qualified project, that is the basis for the assessment;
- a description of the C-PACER program application process and eligibility requirements;
- a statement explaining the lender consent requirement;
- a statement explaining the review requirement;
- a description of marketing and participant education services to be provided for the program; and
- a procedure for collecting the proposed assessment including whether the collection of assessments are assigned to a capital provider.

The program guidebook must be available for public inspection on the county's website or the website of the county's designated program administrator.

To participate in a C-PACER program, the following documentation, as well as any documentation specified in the program guidebook, is required for each proposed project:

- for an existing building, an engineer or other professional listed in the program guidebook must certify (1) where energy or water usage improvements are proposed, the proposed qualified improvements will either 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 that the qualified improvements will result in improved resilience; and
- for new construction, an engineer must certify 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.

Financing obtained under a C-PACER program authorizes a property owner to directly purchase the related equipment and materials for the installation or modification of a qualified improvement; and contract for the installation or modification of a qualified improvement.

After a qualified project is completed, the county must require written verification, from one or more qualified independent third parties listed in the program guidebook, stating the qualified project was properly completed and is operating as intended.

Before a county may enter into a contract with a property owner to impose an assessment to repay C-PACER financing for a project, the county must receive written consent, authorizing the property may participate in the program, from (1) any holder of a lien, mortgage, or security interest in the real property; and (2) any and all holders of affordable housing covenants, restrictions, or regulatory agreements in the real property in the case of a multifamily residential property.

The C-PACER financing for which the assessments may be imposed, includes the cost of materials and labor necessary for installation or modification of a qualified improvement, 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 any costs that may be incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis.

A county may impose fees to offset costs for administering a C-PACER program, including the costs of a third-party administrator. Such fees may be imposed as an application fee paid by the property owner requesting to participate in the program, a percentage of the assessment amount, or in any other manner reflecting the just and reasonable cost of administering the assessment to the county for its administration of the program or any contracted program administrator. The fees included in the total C-PACER financing cannot exceed the actual costs of qualified project approval and management incurred by the county or any contracted program administrator.

Multiple counties may agree to jointly implement or administer a C-PACER program. A county may also contract with another county or taxing district to perform the duties of the county relating to administration and collection of assessments. Enforcement of delinquent assessments or C-PACER financing installment payments remains the responsibility of the county itself, or may be assigned to a capital provider.

Subject to available appropriations, the Department of Commerce (Commerce) must establish a C-PACER program to administer the approval and recording of qualified improvements.

Counties may contract with Commerce to implement and perform the duties of administering a C-PACER program. Commerce may also contract with a third party, selected through a fair and open solicitation process, to administer a C-PACER program available to counties provided the (1) cost of contracted administration reflects the reasonable actual costs incurred by that third party, and (2) the contracted program administrator runs the statewide program available to counties in an efficient and transparent way.

If funding is available, Commerce must allocate appropriated funds to cover start-up costs associated with the program over the course of the first 24 months following the designation of a contracted program administrator. Start-up costs include, but are not limited to, program promotion and contractor education, a stakeholder collaboration process, and early program costs before the contracted program administrator becomes self-sustaining. Commerce may

establish a loan loss reserve or credit enhancement program to support financing qualified projects if it is determined such a credit enhancement program is appropriate.

A county authorizing C-PACER financing through assessments must record written notice of each assessment in the real property records of the county in which the property is located. The assessments, plus any interest, penalties, and charges accrued or accruing on the assessment, is a lien against the real property on which the assessment is imposed.

C-PACER assessments must take precedence over all other liens or encumbrances except a lien for ad valorem taxes on the property. Each C-PACER lien runs with the land, and that portion of the assessment that has not yet become due is not accelerated or eliminated by foreclosure of a property tax lien. Delinquent payments due on an assessment incur interest and penalties in the same manner as delinquent property taxes.

Alternatively, any time after an assessment is recorded, a county may assign a capital provider any C-PACER liens filed by the tax authority. The capital provider may sell or assign any lien received from the participating county. The capital provider has the same powers and rights as a participating county with regard to the precedence and priority of such a lien, interest accrual and fees, and collection expenses. The capital provider or their assignee shall have the same rights to enforce such liens as any private party holding a lien on real property.

After the notice of an assessment is recorded with the county, the C-PACER lien may not be contested on the basis the improvement is not a qualified improvement or the project is not a qualified project.

A county establishing a region where the C-PACER program is offered, is prohibited from (1) issuing a permit, license, or other authorization from the county to a person who owns property in the region contingent on the person entering into a contract to repay financing of a qualified project through C-PACER assessments, or (2) compelling a person who owns property in the region to enter into a contract to repay the financing of a qualified project through assessments.

**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: This bill provides a lot of tools and local options for counties to do deep energy programs for commercial customers. The resiliency measures can include fire suppression and preparing for an earthquake. The way the financing option works has been adopted in several states. There have been no foreclosures. It is a safe mechanism to allow private funding to come in and support these investments. Energy efficiency and life safety improvements are critical.

Financing at this level is an amazing opportunity for commercial properties and critical to deploying solar. These options also work well as a funding mechanism for unreinforced masonry. For every \$1 dollar spent on hazard mitigation, jurisdictions save \$6 dollars on response and recovery. This bill will also help the state meet energy efficiency targets related to greenhouse gas emissions.

CON: Treasurers agree that the goals of the bill are admirable, but do feel it is important to understand the financial implications as written. For the first time ever that we are being asked to record private debt in a public document. The lien also attaches to the property rather than the person and survives foreclosures. All other liens are extinguished through the foreclosure process. This attachment will suppress the amount collected at a property tax auction. People are already in bad financial straits in that situation.

There is also strong potential for predatory lending practices and fraud. There are viable alternatives such as the community renewal authorization or a tax break or local improvement district.

**Persons Testifying:** PRO: Senator Liz Lovelett, Prime Sponsor; Rick Hughes, Crow Valley Holdings, Inc.; Amy Wheelless, NW Energy Coalition; Courtney Blatz, Solar Installers of Washington; Barb Graff, City of Seattle Office of Emergency Management; Kirsten Smith, American Institute of Architects; Court Olson, Optimum Building Consultants; Brad Tower, Community Bankers of Washington; Noah Reandean, Northwest Energy Efficiency Council; Chester Baldwin, BOMA.

CON: Jeff Gadman, Washington Association of County Treasurers, Thurston County Treasurer; Ken Albert, Washington Association of County Treasurers, Grays Harbor Treasurer.

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