

**SHB 1796 - H AMD 239**

By Representative Doglio

**NOT CONSIDERED 12/23/2019**

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 would  
21 be repaid through the local property tax assessment billing process  
22 without the accumulation of cost to the county and without the  
23 creation of a personal debt obligation to the property owner. The  
24 debt obligation would instead be carried by the property and remain  
25 with the property until repaid, regardless of any potential transfer  
26 of property ownership.

27 (3) The legislature declares that the establishment and operation  
28 of a C-PACER program under this chapter serves a valid public purpose  
29 and is in the public interest. Accordingly, the governing body of a  
30 county may determine that it is convenient and advantageous to  
31 establish a program under this chapter.

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

4        (1) "Assessment" means the voluntary contract entered into by the  
5 property owner and a county under this chapter that is recorded on  
6 the land records.

7        (2) "Assessment amount" means the voluntary contractual surcharge  
8 included on the real property tax bill by which the owner of the  
9 eligible property repays the C-PACER financing.

10       (3) "Capital provider" means any private entity that makes or  
11 funds C-PACER financing under this chapter.

12       (4) "C-PACER financing" means an investment from a capital  
13 provider to a property owner to finance a qualified project as  
14 described under this chapter.

15       (5) "C-PACER lien" means the lien that the county records on the  
16 eligible property pursuant to the assessment and related documents.

17       (6) "Eligible property" means privately owned commercial,  
18 industrial, or agricultural real property or multifamily residential  
19 real property with five or more dwelling units. Eligible property may  
20 be owned by any type of business, corporation, individual, or  
21 nonprofit organization permitted by state law.

22       (7) "Financing agreement" means the contract under which a  
23 property owner agrees to repay a capital provider for the C-PACER  
24 financing including, but not limited to, details of any finance  
25 charges, fees, debt servicing, and any terms relating to treatment of  
26 prepayment and partial payment of the C-PACER financing.

27       (8) "Program" means a C-PACER administrative mechanism  
28 established under this chapter.

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

34       (10) "Qualified improvement" means a permanent improvement  
35 affixed to real property and intended to: (a) Decrease energy  
36 consumption or demand through the use of efficiency technologies,  
37 products, or activities that reduce or support the reduction of  
38 energy consumption, allow for the reduction in demand, or support the  
39 production of clean, renewable energy, including but not limited to a  
40 product, device, or interacting group of products or devices on the

1 customer's side of the meter that generates electricity, provides  
2 thermal energy, or regulates temperature; (b) decrease water  
3 consumption or demand through the use of efficiency technologies,  
4 products, or activities that reduce or support the reduction of water  
5 consumption or allow for the reduction in demand; or (c) increase  
6 resilience, including but not limited to seismic retrofits, flood  
7 mitigation, stormwater management, wildfire and wind resistance,  
8 energy storage, and microgrids.

9 (11) "Qualified project" means the installation or modification  
10 of a qualified improvement, including new construction or the  
11 adaptive reuse of eligible property with a qualified improvement.

12 (12) "Region" means a geographical area as defined in section 3  
13 of this act.

14 NEW SECTION. **Sec. 3.** (1) In order to establish a program under  
15 this chapter, the governing body of a county must take the following  
16 actions:

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

18 (i) A statement that financing qualified projects through  
19 assessments is in the public interest for safety, health, and other  
20 common good reasons;

21 (ii) A statement that the county intends to make assessments to  
22 repay C-PACER financing for qualified projects available to owners of  
23 eligible property;

24 (iii) A description of the region in which the program is  
25 offered, which: (A) May include the entire county, which may include  
26 both unincorporated and incorporated territory, and (B) must be  
27 located wholly within the county's jurisdiction;

28 (iv) A county may designate more than one region. If multiple  
29 regions are designated, the regions may be separate, overlapping, or  
30 coterminous;

31 (v) A description of how the county will bill, collect, and remit  
32 payments currently due to capital providers under the financing  
33 agreement, if this option is available;

34 (vi) A description of how the capital providers will bill,  
35 collect, and remit payments currently due, if this option is  
36 available;

37 (vii) A description of the process to create a program guidebook  
38 to be prepared under section 8 of this act and a statement

1 identifying where the program guidebook is available for public  
2 inspection; and

3 (viii) A statement of the time and place for a public hearing on  
4 the proposed program; and

5 (b) Hold a public hearing at which the public may comment on the  
6 proposed program, including the program guidebook prepared under  
7 section 8 of this act.

8 (2) For the purposes of subsection (1)(a)(viii) of this section,  
9 the resolution or ordinance may incorporate the program guidebook or  
10 any amended versions of the program guidebook, as appropriate, by  
11 reference.

12 NEW SECTION. **Sec. 4.** (1) The C-PACER financing for which  
13 assessments are imposed through a program established under this  
14 chapter may include:

15 (a) The cost of materials and labor necessary for installation or  
16 modification of a qualified improvement;

17 (b) Permit fees;

18 (c) Inspection fees;

19 (d) Lender's fees;

20 (e) Program application and administrative fees;

21 (f) Project development and engineering fees;

22 (g) Third-party review fees, including verification review fees;

23 (h) Capitalized interest;

24 (i) Interest reserves;

25 (j) Escrow for prepaid property taxes and insurance; or

26 (k) Any other fees or costs that may be incurred by the property  
27 owner incident to the installation, modification, or improvement on a  
28 specific or pro rata basis.

29 (2) In order to administer a program established under section 3  
30 of this act, a county may impose fees to offset costs related to  
31 administering the program, including the costs of a third-party  
32 administrator:

33 (a) The fees required by this subsection may be imposed as an  
34 application fee paid by the property owner requesting to participate  
35 in the program expressed as a set amount, a percentage of the  
36 assessment amount, or in any other manner that reflects the just and  
37 reasonable cost of administering the assessment to the county for its  
38 administration of the program or any contracted program  
39 administrator; and

1 (b) Program fees allowed in this subsection and included in the  
2 total C-PACER financing must not exceed the actual costs of qualified  
3 project approval and management incurred by the county or any  
4 contracted program administrator.

5 NEW SECTION. **Sec. 5.** The governing body of a county may, in  
6 accordance with chapter 39.34 RCW, contract with the governing body  
7 of another county or taxing district, as that term is defined in RCW  
8 84.04.120, or another entity, including a county treasurer, to  
9 perform the duties of the county relating to the administration and  
10 collection of the assessments imposed by the county under this  
11 chapter. Enforcement of delinquent assessment or C-PACER financing  
12 installment payments, including foreclosure, shall remain the  
13 responsibility of the county itself, in accordance with section 13 of  
14 this act.

15 NEW SECTION. **Sec. 6.** (1) Any combination of counties may agree  
16 to jointly implement or administer a program under this chapter.

17 (2) If two or more counties implement a program jointly, a single  
18 public hearing held jointly by the cooperating counties is sufficient  
19 to satisfy the requirements of this chapter.

20 (3) One or more counties may contract with a third party,  
21 including another county, to administer a program. Enforcement of  
22 delinquent assessment or C-PACER financing installment payments,  
23 including foreclosure, shall remain the responsibility of the county  
24 itself, in accordance with section 13 of this act.

25 NEW SECTION. **Sec. 7.** (1) Subject to available appropriations,  
26 the department of commerce shall establish a voluntary statewide C-  
27 PACER program to administer the approval and municipal recordation of  
28 qualified improvements.

29 (2) The governing body of a county may, in accordance with  
30 chapter 39.34 RCW, contract with the department of commerce, or its  
31 subcontractor, to implement and perform the duties of administering a  
32 program under this chapter that may be available to counties  
33 statewide. Enforcement of delinquent assessment or C-PACER financing  
34 installment payments, including foreclosure, shall remain the  
35 responsibility of the county itself, or may be assigned to the  
36 capital provider as set forth in section 13(6) of this act.

1 (3) The department of commerce may contract with a third party,  
2 including another county, to administer a program that is available  
3 on a voluntary basis to counties statewide, provided that:

4 (a) The cost of contracted administration reflects the reasonable  
5 actual costs incurred by that third party and any government entities  
6 for which the third party collects program fees; and

7 (b) The contracted program administrator runs the statewide  
8 program available to counties statewide efficiently and  
9 transparently, including by:

10 (i) Making any services offered by the contracted program  
11 administrator to property owners, such as estimating energy savings,  
12 overseeing project development, or evaluating alternative equipment  
13 installations, priced separately and open to purchase by the property  
14 owner from qualified third-party providers;

15 (ii) Making any properties participating in the statewide program  
16 available to receiving impartial terms from all interested and  
17 qualifying third-party capital providers;

18 (iii) Disclosing to the public if the contracted program  
19 administrator has a financial interest in any of the services  
20 provided to property owners;

21 (iv) Allowing financial underwriting and evaluation to be  
22 performed by capital providers; and

23 (v) Working in a collaborative working group process with capital  
24 providers and other stakeholders to develop the program guidebook and  
25 any other relevant documents or forms.

26 (4) The department of commerce must select any contracted program  
27 administrator through a fair and open solicitation process that  
28 considers the principles for administration provided under subsection  
29 (3)(b) of this section.

30 (5) To the extent that funding is appropriated specifically for  
31 the purposes of this section, the department of commerce shall  
32 allocate appropriated funds to cover start-up costs associated with  
33 the voluntary statewide program over the course of the first twenty-  
34 four months following the designation of a contracted program  
35 administrator, including but not limited to program promotion and  
36 contractor education, a stakeholder collaboration process outlined in  
37 subsection (3)(b)(v) of this section, and early program costs before  
38 the contracted program administrator becomes self-sustaining.

39 (6) Subject to available appropriations, the department of  
40 commerce may establish a loan loss reserve or credit enhancement

1 program to support financing of qualified projects issued under this  
2 section, should the agency determine that such a credit enhancement  
3 program is appropriate.

4 NEW SECTION. **Sec. 8.** (1) Before establishing a program under  
5 this chapter, the governing body of a county, or the governing body's  
6 designee, must prepare a program guidebook that includes, at minimum:

7 (a) A map showing the boundaries of the region designated in  
8 accordance with section 3 of this act;

9 (b) A sample form bilateral or triparty contract or contracts, as  
10 appropriate, between the county, the property owner, and the capital  
11 provider specifying the terms of:

12 (i) An assessment under the program; and

13 (ii) The C-PACER financing provided by a capital provider;

14 (c) A statement identifying a county office, agency, or  
15 authorized third party to enter into written contracts on behalf of  
16 the county;

17 (d) A statement that the period of the assessment will not exceed  
18 the useful life of the qualified project, or weighted average life if  
19 more than one qualified improvement is included in the qualified  
20 project, that is the basis for the assessment;

21 (e) A description of the application process and eligibility  
22 requirements for participation in the program;

23 (f) A statement explaining the lender consent requirement  
24 provided in section 9 of this act;

25 (g) A statement explaining the review requirement provided by  
26 section 10 of this act;

27 (h) A description of marketing and participant education services  
28 to be provided for the program; and

29 (i) The procedures for collecting the proposed assessment,  
30 including whether the county assigns collection and enforcement to a  
31 capital provider, as provided in sections 7(2) and 13(6) of this act.

32 (2) The relevant program administrator must make the program  
33 guidebook available for public inspection:

34 (a) On the county's web site; or

35 (b) On the web site of the county's designated program  
36 administrator.

37 NEW SECTION. **Sec. 9.** (1) Before a county may enter into a  
38 written contract with a record owner of any eligible property to

1 impose an assessment to repay the C-PACER financing of a qualified  
2 project under this chapter, the county, or its program administrator,  
3 must receive written consent from any holder of a lien, mortgage, or  
4 security interest in the real property that the property may  
5 participate in the program.

6 (2) Before a county may enter into a written contract with a  
7 record owner of any multifamily residential real property with five  
8 or more dwelling units to impose an assessment to repay the C-PACER  
9 financing of a qualified project under this chapter, the county, or  
10 its program administrator, must also receive written consent from any  
11 and all holders of affordable housing covenants, restrictions, or  
12 regulatory agreements in the real property that the property may  
13 participate in the program.

14 NEW SECTION. **Sec. 10.** (1) A program established under this  
15 chapter must require for each proposed qualified project the  
16 following documentation as well as any documentation further  
17 specified in the program guidebook:

18 (a) For an existing building: (i) Where energy or water usage  
19 improvements are proposed, certification by a licensed professional  
20 engineer, or other professional listed in the program guidebook,  
21 stating that the proposed qualified improvements will either result  
22 in more efficient use or conservation of energy or water, result in  
23 the reduction of greenhouse gas emissions, or result in the addition  
24 of renewable sources of energy or water, or (ii) where resilience  
25 improvements are proposed, certification by a licensed professional  
26 engineer stating that the qualified improvements will result in  
27 improved resilience.

28 (b) For new construction, certification by a licensed  
29 professional engineer stating that the proposed qualified  
30 improvements will enable the project to exceed the energy efficiency  
31 or water efficiency or renewable energy or renewable water or  
32 resilience requirements of the current building code.

33 (2) After a qualified project is completed, the county must  
34 require written verification from one or more qualified independent  
35 third parties, as defined in the program guidebook, stating that the  
36 qualified project was properly completed and is operating as intended  
37 in the documentation provided under subsection (1) of this section.



1        NEW SECTION.    **Sec. 11.**    The proposed C-PACER financing for a  
2 qualified project may authorize the property owner to:

3        (1) Purchase directly the related equipment and materials for the  
4 installation or modification of a qualified improvement; and

5        (2) Contract directly, including through lease, power purchase  
6 agreement, or other service contract, for the installation or  
7 modification of a qualified improvement.

8        NEW SECTION.    **Sec. 12.**    (1) A county that authorizes financing  
9 through assessments under this chapter must record written notice of  
10 each assessment in the real property records of the county in which  
11 the property is located.

12        (2) The recording under subsection (1) of this section must  
13 contain:

14        (a) The assessment amount;

15        (b) The legal description of the eligible property;

16        (c) The name of each property owner; and

17        (d) A reference to the assessment provided under this chapter.

18        NEW SECTION.    **Sec. 13.**    (1) The assessment amount under this  
19 chapter plus any interest, penalties, and charges accrued or accruing  
20 on the assessment:

21        (a) Shall take precedence over all other liens or encumbrances  
22 except a lien for ad valorem taxes imposed by a local government on  
23 real property, which lien for taxes shall have priority over such  
24 benefit assessment lien, provided existing mortgage holder(s), if  
25 any, has provided written consent described in section 9 of this act;  
26 and

27        (b) Is a first and prior lien, second only to a lien for ad  
28 valorem taxes imposed by a local government against the real property  
29 on which the assessment is imposed, from the date on which the notice  
30 of contractual agreement is recorded until the assessment, interest,  
31 penalty, and charges accrued or accruing are paid.

32        (2) The C-PACER lien runs with the land, and that portion of the  
33 assessment that has not yet become due is not accelerated or  
34 eliminated by foreclosure of a property tax lien.

35        (3) The assessment shall be enforced by the county in the same  
36 manner that the collection of delinquent real property taxes is  
37 enforced by the county under chapter 84.64 RCW.

1 (4) Delinquent installments due on an assessment incur interest  
2 and penalties in the same manner as delinquent property taxes.

3 (5) A county may recover costs and expenses, including attorneys'  
4 fees, in a suit to collect a delinquent installment of an assessment  
5 in the same manner as in a suit to collect a delinquent property tax.

6 (6) Alternatively, any time after the assessment is recorded, any  
7 participating county may assign to the capital provider any and all  
8 C-PACER liens filed by the tax authority, as provided in the written  
9 agreement between the participating county and the capital provider.  
10 The capital provider may sell or assign, for consideration, any and  
11 all liens received from the participating county. The capital  
12 provider or their assignee shall have and possess the same powers and  
13 rights at law or in equity as the participating county and its tax  
14 authority would have had if the lien had not been assigned with  
15 regard to the precedence and priority of such lien, the accrual of  
16 interest and the fees and expenses of collection. The capital  
17 provider or their assignee shall have the same rights to enforce such  
18 liens as any private party holding a lien on real property,  
19 including, but not limited to, foreclosure and a suit on the debt.  
20 Interest and penalties shall accrue on delinquent installments in the  
21 same manner as property taxes. Costs and reasonable attorneys' fees  
22 may be collected by the assignee at any time after demand for payment  
23 has been made by the assignee.

24 (7) After the notice of an assessment is recorded as provided in  
25 section 12 of this act, the C-PACER lien may not be contested on the  
26 basis that the improvement is not a qualified improvement or that the  
27 project is not a qualified project.

28 NEW SECTION. **Sec. 14.** A county that establishes a region under  
29 this chapter may not:

30 (1) Make the issuance of a permit, license, or other  
31 authorization from the county to a person who owns property in the  
32 region contingent on the person entering into a written contract to  
33 repay the financing of a qualified project through assessments under  
34 this chapter; or

35 (2) Otherwise compel a person who owns property in the region to  
36 enter into a written contract to repay the financing of a qualified  
37 project through assessments under this chapter.

1        NEW SECTION.    **Sec. 15.**    The members of the governing body of a  
2 county, employees of a county, and board members, executives,  
3 employees, and contractors of a third party who enter into a contract  
4 with a county to provide administrative services for a program under  
5 this chapter are not personally liable as a result of exercising any  
6 rights or responsibilities granted under this chapter.

7        NEW SECTION.    **Sec. 16.**    No section under this chapter shall be  
8 interpreted to require a county to enforce any privately financed  
9 debt, apart from the assessment amount which is authorized through a  
10 program created under this chapter.

11       NEW SECTION.    **Sec. 17.**    Sections 1 through 16 of this act  
12 constitute a new chapter in Title 35 RCW."

13       Correct the title.

EFFECT: Changes the term "municipality" to "county" throughout the act and as a result, authorizes counties and private entities to provide financing for qualified building improvements to property owners under a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program. States that no provision under the act is to be interpreted to require a county to enforce any privately financed debt apart from the assessments imposed through a C-PACER program. Provides that any C-PACER assessment amount imposed, along with any interest, penalties, and charges, is a first and prior lien, second only to a lien for ad valorem taxes imposed by a local government against the real property on which the assessment is imposed.

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