

2SHB 2405 - H AMD 1553

By Representatives Duerr, Pollet

ADOPTED 02/18/2020

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 are
21 repaid without the accumulation of cost to the county and without the
22 creation of a personal debt obligation to the property owner. The
23 debt obligation is instead carried by the property and remains with
24 the property until repaid, regardless of any potential transfer of
25 property ownership. After the adoption of a C-PACER program, a
26 county's role is limited to the recordation of C-PACER liens and
27 administration of the C-PACER program.

28 (3) The legislature declares that the establishment and operation
29 of a C-PACER program under this chapter serves important public
30 health and safety interests. A qualified improvement as defined in
31 section 2 of this act provides benefit to the public, either in the
32 form of energy or water resource conservation, reduced public health

1 risk, or reduced public emergency response risk. Accordingly, the
2 governing body of a county is authorized to determine that it is
3 convenient and advantageous to adopt a program under this chapter.

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

7 (1) "Capital provider" means any private entity that makes or
8 funds C-PACER financing under this chapter.

9 (2) "C-PACER financing" means an investment from a capital
10 provider to a property owner to finance a qualified project as
11 described under this chapter.

12 (3) "C-PACER lien" means the lien recorded at the county on the
13 eligible property which remains on the property until paid in full.

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

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

25 (6) "Program" means a C-PACER program established under this
26 chapter.

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

32 (8) "Project application" means an application submitted to the
33 department of commerce to demonstrate that a proposed project
34 qualifies for C-PACER financing and for a C-PACER lien.

35 (9) "Qualified improvement" means a permanent improvement affixed
36 to real property and intended to: (a) Decrease energy consumption or
37 demand through the use of efficiency technologies, products, or
38 activities that reduce or support the reduction of energy
39 consumption, allow for the reduction in demand, or support the

1 production of clean, renewable energy, including but not limited to a
2 product, device, or interacting group of products or devices on the
3 customer's side of the meter that generates electricity, provides
4 thermal energy, or regulates temperature; (b) decrease water
5 consumption or demand and address safe drinking water through the use
6 of efficiency technologies, products, or activities that reduce or
7 support the reduction of water consumption, allow for the reduction
8 in demand, or reduce or eliminate lead from water which may be used
9 for drinking or cooking; or (c) increase resilience, including but
10 not limited to seismic retrofits, flood mitigation, stormwater
11 management, wildfire and wind resistance, energy storage, and
12 microgrids.

13 (10) "Qualified project" means a project approved by the
14 department of commerce, involving the installation or modification of
15 a qualified improvement, including new construction or the adaptive
16 reuse of eligible property with a qualified improvement.

17 (11) "Region" means a geographical area as determined by a county
18 pursuant to section 4 of this act.

19 NEW SECTION. **Sec. 3.** (1) The department of commerce shall
20 establish a voluntary statewide C-PACER program that counties may
21 choose to participate in.

22 (a) The department of commerce must administer the statewide
23 program available to counties efficiently and transparently,
24 including by:

25 (i) Making any services that the department may choose to offer
26 to property owners, such as estimating energy savings, overseeing
27 project development, or evaluating alternative equipment
28 installations, priced separately and open to purchase by the property
29 owner from qualified third-party providers;

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

33 (iii) Allowing financial underwriting and evaluation to be
34 performed by capital providers; and

35 (iv) Working in a collaborative working group process with
36 capital providers and other stakeholders to develop the program
37 guidebook and any other relevant documents or forms.

38 (2) The department of commerce may establish uniform statewide
39 criteria for which projects qualify due to their public benefit for

1 participation in C-PACER programs administered by counties,
2 including, but not limited to, criteria for measuring or determining
3 if investments in energy will reduce greenhouse gas emissions; be
4 cost-effective for reducing energy demand or replacing nonrenewable
5 energy with renewable energy; will be appropriate to meet seismic
6 risks for each region of the state and type of structure; will reduce
7 stormwater or pollution to be significant public benefit; or, will
8 reduce the risk of wildfire, flooding, or other natural or human-
9 caused disaster, including how to determine if the public benefit in
10 reduced public risk and emergency response qualifies for inclusion in
11 C-PACER programs.

12 (3) The department of commerce must prepare a program guidebook
13 that counties can adopt and amend as necessary. The guidebook must
14 include at minimum:

15 (a) A sample form bilateral or triparty contract or contracts, as
16 appropriate, between the department of commerce, the property owner,
17 and the capital provider which details the obligation for repayment
18 by the property owner in accordance with the terms of:

19 (i) A C-PACER lien under the program; and

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

21 (b) A statement that the period of the financing agreement will
22 not exceed the useful life of the qualified project, or weighted
23 average life if more than one qualified improvement is included in
24 the qualified project, that is the basis for the financing agreement;

25 (c) A description of the application process and eligibility
26 requirements for participation in the program;

27 (d) A statement explaining the lender consent requirement
28 provided in section 8 of this act;

29 (e) A statement explaining the review requirement provided by
30 section 4 of this act;

31 (f) A description of marketing and participant education services
32 to be provided for the program; and

33 (g) A statement specifying that the county has no liability as a
34 result of the agreement.

35 (4) The adopted county guidebook may include or incorporate by
36 reference criteria or findings by the department of commerce pursuant
37 to this section for determining if projects have adequate public
38 benefit to participate in the C-PACER program administered by a
39 county.

1 (5) The department of commerce must make the program guidebook
2 available for public inspection on the department of commerce's web
3 site.

4 NEW SECTION. **Sec. 4.** (1) The department of commerce must
5 establish a C-PACER application and review process to review and
6 evaluate project applications for C-PACER financing. The department
7 of commerce may prescribe the form and manner of the application. As
8 part of the application, each applicant must provide to the
9 department of commerce a copy of the ordinance or resolution adopted
10 by the county approving C-PACER financing for an area within the
11 county. The department of commerce shall grant any application that
12 satisfies the application criteria determined by the department of
13 commerce. At a minimum, an applicant must demonstrate:

14 (a) That the project provides a benefit to the public, in the
15 form of energy or water resource conservation, reduced public health
16 risk, or reduced public emergency response risk.

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

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

31 (2) The department of commerce may charge an application fee to
32 cover the costs of establishing and conducting the application review
33 process.

34 (3) Upon the denial of an application, the department of commerce
35 must provide an opportunity for an adjudicative proceeding subject to
36 the applicable provisions of chapter 34.05 RCW.

37 (4) After an approved project is completed, an applicant must
38 provide the department of commerce written verification from one or
39 more qualified independent third parties, as defined in the program

1 guidebook, stating that the qualified project was properly completed
2 and is operating as intended.

3 (5) The department of commerce must begin accepting applications
4 and approving projects under this section on and after July 1, 2021.

5 (6) The department of commerce may adopt rules to implement this
6 section.

7 NEW SECTION. **Sec. 5.** (1) To adopt a program under this chapter,
8 the governing body of a county must take the following actions:

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

10 (i) A statement that financing qualified projects is in the
11 public interest for safety, health, and other common good reasons;

12 (ii) A description of the region in which the program is offered,
13 which:

14 (A) May include the entire county, which may include both
15 unincorporated and incorporated territory; and

16 (B) Must be located wholly within the county's jurisdiction; and

17 (iii) A statement of the time and place for a public hearing on
18 the proposed program; and

19 (b) Hold a public hearing at which the public may comment on the
20 proposed program.

21 (2) A county may designate more than one region. If multiple
22 regions are designated, the regions may be separate, overlapping, or
23 coterminous.

24 (3) Counties may amend the program guidebook prepared by the
25 department of commerce under section 3 of this act as necessary.

26 (4) The resolution or ordinance adopted by a county under this
27 subsection may incorporate the program guidebook or any amended
28 versions of the program guidebook, as appropriate, by reference.

29 (5) A county adopting a C-PACER program pursuant to this act may
30 narrow the definition of "qualified improvements" to be consistent
31 with the county's climate goals.

32 (6) Any combination of counties may agree to jointly implement a
33 program under this chapter. If two or more counties implement a
34 program jointly, a single public hearing held jointly by the
35 cooperating counties is sufficient to satisfy the requirements of
36 this chapter.

1 NEW SECTION. **Sec. 6.** (1) A county must record each C-PACER lien
2 in the real property records of the county in which the property is
3 located.

4 (2) The recording under subsection (1) of this section must
5 contain:

- 6 (a) The legal description of the eligible property;
- 7 (b) The name of each property owner;
- 8 (c) The date on which the lien was created;
- 9 (d) The principal amount of the lien; and
- 10 (e) The terms and length of the lien.

11 NEW SECTION. **Sec. 7.** (1) The C-PACER lien amount plus any
12 interest, penalties, and charges accrued or accruing on the C-PACER
13 lien:

14 (a) Takes precedence over all other liens or encumbrances except
15 a lien for taxes imposed by the state, a local government, or a
16 junior taxing district on real property, which liens for taxes shall
17 have priority over such benefit C-PACER lien, provided existing
18 mortgage holder(s), if any, has provided written consent described in
19 section 8 of this act; and

20 (b) Is a first and prior lien, second only to a lien for taxes
21 imposed by the state, a local government, or a junior taxing district
22 against the real property on which the C-PACER lien is imposed, from
23 the date on which the notice of the C-PACER lien is recorded until
24 the C-PACER lien, interest, penalty, and charges accrued or accruing
25 are paid.

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

29 (3) Delinquent installments due on a C-PACER lien incur interest
30 and penalties as specified in the financing agreement.

31 (4) After the C-PACER lien is recorded as provided in this
32 section, the C-PACER lien may not be contested on the basis that the
33 improvement is not a qualified improvement or that the project is not
34 a qualified project.

35 (5) Collection and enforcement of delinquent C-PACER liens or C-
36 PACER financing installment payments, including foreclosure, shall
37 remain the responsibility of the capital provider.

38 (6) After the expiration of one year from the date of
39 delinquency, the capital provider may foreclose and enforce the lien

1 by a civil action in the court having jurisdiction in the manner
2 prescribed for the judicial foreclosure of a mortgage. The court
3 shall have the power to order the sale of the property. In any action
4 brought to foreclose a lien, the owner shall be joined as a party.
5 The interest in the real property of any person who, prior to the
6 commencement of the action, has a recorded interest in the property,
7 or any part thereof, shall not be foreclosed or affected unless they
8 are joined as a party.

9 (7) The capital provider may sell or assign, for consideration,
10 any and all liens received from the participating county. The capital
11 provider or their assignee shall have and possess the same powers and
12 rights at law or in equity to enforce the C-PACER lien in the same
13 manner as described in subsection (6) of this section.

14 NEW SECTION. **Sec. 8.** (1) Before a capital provider may enter
15 into a financing agreement to provide C-PACER financing of a
16 qualified project to a record owner of any eligible property, the
17 department of commerce must receive written consent from any holder
18 of a lien, mortgage, or security interest in the real property that
19 the property may participate in the program and that the C-PACER lien
20 will take precedence over all other liens except for a lien for taxes
21 as described in section 7 of this act.

22 (2) Before a capital provider may enter into a financing
23 agreement to provide C-PACER financing of a qualified project to the
24 record owner of any multifamily residential real property with five
25 or more dwelling units, the department of commerce must also receive
26 written consent from any and all holders of affordable housing
27 covenants, restrictions, or regulatory agreements in the real
28 property that the property may participate in the program and that
29 the C-PACER lien will take precedence over all other liens except for
30 a lien for taxes as described in section 7 of this act.

31 NEW SECTION. **Sec. 9.** The C-PACER financing through a program
32 established under this chapter may include:

33 (1) The cost of materials and labor necessary for installation or
34 modification of a qualified improvement;

35 (2) Permit fees;

36 (3) Inspection fees;

37 (4) Lender's fees;

38 (5) Program application and administrative fees;

- 1 (6) Project development and engineering fees;
- 2 (7) Third-party review fees, including verification review fees;
- 3 (8) Capitalized interest;
- 4 (9) Interest reserves;
- 5 (10) Escrow for prepaid property taxes and insurance; or
- 6 (11) Any other fees or costs that may be incurred by the property
- 7 owner incident to the installation, modification, or improvement on a
- 8 specific or pro rata basis.

9 NEW SECTION. **Sec. 10.** The proposed C-PACER financing for a
10 qualified project may authorize the property owner to:

- 11 (1) Purchase directly the related equipment and materials for the
- 12 installation or modification of a qualified improvement; and
- 13 (2) Contract directly, including through lease, power purchase
- 14 agreement, or other service contract, for the installation or
- 15 modification of a qualified improvement.

16 NEW SECTION. **Sec. 11.** A county that adopts a program and
17 designates a program region under this chapter may not:

- 18 (1) Make the issuance of a permit, license, or other
- 19 authorization from the county to a person who owns property in the
- 20 region contingent on the person entering into a written contract to
- 21 repay the financing of a qualified project under this chapter; or
- 22 (2) Otherwise compel a person who owns property in the region to
- 23 enter into a written contract to repay the financing of a qualified
- 24 project under this chapter.

25 NEW SECTION. **Sec. 12.** The members of the governing body of a
26 county, employees of a county, and board members, executives, and
27 employees under this chapter are not personally liable as a result of
28 exercising any rights or responsibilities granted under this chapter.

29 NEW SECTION. **Sec. 13.** A county may not enforce any privately
30 financed debt under this chapter. Neither the state nor any county
31 may use public funds to fund or repay any loan between a capital
32 provider and property owner. No section under this chapter shall be
33 interpreted to pledge, offer, or encumber the full faith and credit
34 of a local government, nor shall any local government pledge, offer,
35 or encumber its full faith and credit for any lien amount through a
36 program.

1 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
2 constitute a new chapter in Title 36 RCW."

3 Correct the title.

EFFECT: (1) Limits counties' roles to establishing a C-PACER program and recoding liens, and removes provisions relating to counties administering the C-PACER program.

(2) Removes language related to the assessment process.

(3) Adds "project application" to the definitions section.

(4) Updates various definitions.

(5) Clarifies roles regarding program administration, including:

(a) Requiring the department of commerce to review and approve applications.

(b) Specifying that the department of commerce must determine whether each proposed qualified project meets the public benefits requirement.

(c) Requiring the department of commerce to establish a program guidebook.

(d) Permitting the department of commerce to establish rules to implement the application and review requirement.

(e) Removing provisions permitting the department of commerce to contract with a third party to administer the C-PACER program.

(f) Requiring the department of commerce to begin accepting and approving applications by July 1, 2021.

(6) Requires counties to establish the C-PACER program whether or not there is appropriation specifically for that purpose.

(7) Permits counties to amend the program guidebook prepared by the department of commerce.

(8) Removes provisions stating that repayment would occur through the local property tax assessment billing process.

(9) Specifies that interest and penalties on delinquent installment payments are incurred as specified in the financing agreement, rather than in the same manner as delinquent property taxes.

(10) Clarifies that tax liens with senior priority over C-PACER liens include tax liens imposed by the state and junior taxing districts.

(11) Requires existing lien holders on the property to consent to the C-PACER lien having priority over existing liens.

(12) Adds elements to the lien recording requirements.

(13) Specifies that local governments may not encumber the full faith and credit of the local government.

(14) Adds a review process for denied applications in accordance with the administrative procedure act in chapter 34.05 RCW.

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