HOUSE BILL REPORT
HB 1796

As Reported by House Committee On:
Local Government

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

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

Sponsors: Representatives Doglio, Fitzgibbon, Shewmake, Peterson, Lekanoff, Pettigrew, Goodman, Walen, Slatter, Appleton, Macri and Tarleton.

Brief History:
Committee Activity:
Local Government: 2/12/19, 2/20/19 [DPS].

Brief Summary of Substitute Bill

- Creates a commercial property assessed clean energy and resiliency (C-PACER) program that facilitates a public-private partnership for the financing of energy efficiency retrofits and new construction.
- Authorizes a capital provider (private entity) 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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Pollet, Chair; Peterson, Vice Chair; Appleton and Senn.

Minority Report: Do not pass. Signed by 2 members: Representatives Kraft, Ranking Minority Member; Goehner.

Staff: Yvonne Walker (786-7841).

Background:

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.

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 photovoltaic system (PV) or solar thermal panels, high performance air conditioning, and insulation. Property Assessed Clean Energy 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 both 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 property benefit in different ways. Special assessments are not subject to the same limitations and procedures that govern property tax levies.

Summary of Substitute Bill:

A Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program is established. This program authorizes local jurisdictions and private entities to provide financing to property owners. The financing must be used to provide qualified building improvements.

"Qualified improvement" means a permanent improvement affixed to real property and intended to: (1) 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 that generates electricity, provides thermal energy, or regulates temperature; (2) decrease water consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption or allow for the reduction in demand; or (3) increase resilience, including but not limited to seismic retrofits, flood mitigation, storm water management, wildfire and wind resistance, energy storage, and microgrids.

Local Jurisdictions.
In order to establish a C-PACER program, the governing body of a municipality 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 municipality 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 municipality 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.

Program Handbook.
Each local jurisdiction that establishes a C-PACER program must prepare a program guidebook on the C-PACER program that includes, at minimum a:
- map showing the boundaries of the region;
- a sample contract between the municipality, 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 municipality;
- 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 municipality's website or the website of the municipality's designated program administrator.

Program Requirements.
In order 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, that 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.

- For new construction, an engineer must certify 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.

Financing obtained under a C-PACER program authorizes a property owner to directly: (1) purchase the related equipment and materials for the installation or modification of a qualified improvement; and (2) contract for the installation or modification of a qualified improvement.

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

Program Fees and Assessments.
Before a municipality may enter into a contract with a property owner to impose an assessment to repay assessments and C-PACER financing for a project, the municipality must receive written consent, authorizing that the property may participate in the program, from: (1) the lien holder or person who holds security interest in the real property; or (2) 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.

In addition, a municipality 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 that reflects the just and reasonable cost of administering the assessment to the municipality 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 municipality or any contracted program administrator.

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

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

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

If funding is available, the COM 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 includes, 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. In addition, the COM may establish a loan loss reserve or credit enhancement program to support financing of qualified projects if it is determined that such a credit enhancement program is appropriate.

C-PACER Assessments for Repayment.
A municipality that authorizes 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 municipality 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 municipality. The capital provider has the same powers and rights as a participating municipality with regard to the precedence and priority of such lien, the accrual of interest and the fees, and expenses of collection. 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 municipality, 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.

A municipality that establishes a region, in which the C-PACER program if offered, is prohibited from: (1) making the issuance of a permit, license, or other authorization from the municipality to a person who owns property in the region contingent on the person entering into a contract to repay the 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.

Substitute Bill Compared to Original Bill:

The following provisions were added that:
- allow a capital provider to provide enforcement of delinquent assessments or C-PACER financing installment payments;
- require the C-PACER program guidebook to include procedures for collecting the assessments;
- require that, before a municipality enters into a contract with a property owner, the municipality must receive written consent from all entities who may have an affordable housing covenant, restriction, or regulatory agreement in the property;
- require that in order for an existing building to participate in the C-PACER program, a "professional listed in the guidebook" must certify that the C-PACER improvements will result in the addition of renewable sources of energy, water, or improved resilience;
- mandate that a municipality must require written verification from one or more qualified independent third parties as defined in the guidebook stating that the C-PACER project was properly completed and is operating as intended;
- state that all assessments, interest, penalties, and charges relating to the C-PACER program takes precedence over all other liens or encumbrances except for liens for property taxes;
- provide as an alternative that a municipality may assign to a capital provider all C-PACER liens filed by the tax authority;
- authorize the capital provider to sell or assign, for consideration, any liens received from the participating municipality;
- require that the interest and penalties accrued on delinquent installments be the same as property taxes; and
- authorizes that the costs and reasonable attorneys' fees be collected by the assignee at any time after demand for payment has been made by the assignee.

Appropriation: None.

Fiscal Note: Requested on February 4, 2019.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Energy efficiency improvements are expensive and one of the biggest barriers to providing such upgrades is upfront capital. This is why most property owners will not invest in them. This bill helps to alleviate the upfront costs of investing in energy efficiency and resiliency for buildings. It also provides a way for building owners to finance seismic upgrades.

The Shift Zero organization did some research on the gift of funds issue and came up with the C-PACER model offered in this bill. Property Assessed Clean Energy has been a common successful financing mechanism in other states as it allows financing to be repaid over long periods of time. There are 16 active PACE programs in the United States and the model in this bill is very similar to a program used in Texas. Commercial property assessed clean energy and resilience financing allows property owners to finance energy upgrades by providing a flexible funding tool to commercial property owners from a third party instead of using funds from a municipality or even from using their own personal credit.

The expansion of the housing market in Washington is important, but if the costs of utilities are expensive it becomes a burden to families who are renting. If energy costs are reduced, it provides stability for families. The environment is important and this bill would be good for the community. The financing tool in this bill should also be replicated and offered to property owners of residential buildings.

(Opposed) None.

Persons Testifying: Representative Doglio, prime sponsor; Noah Reandeau, Northwest Energy Efficiency Council; Cynthia Pratt, City of Lacey; Court R. Olson, Shift Zero; and Chester Baldwin, Building Owners and Managers Association.

Persons Signed In To Testify But Not Testifying: None.