HOUSE BILL REPORT
HB 2405

As Reported by House Committee On:
Local Government
Appropriations

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

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

Sponsors: Representatives Duerr, Barkis, Fitzgibbon, Shewmake, Hoff, Kloba, Corry, Gildon, Ybarra, Jenkin, Pollet and Doglio.

Brief History:
Committee Activity:
Local Government: 1/21/20, 1/24/20 [DPS];
Appropriations: 2/8/20, 2/11/20 [DP2S(w/o sub LG)].

Brief Summary of Second Substitute Bill

- Creates a commercial property assessed clean energy and resiliency (C-PACER) program that facilitates a partnership for the financing of 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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Pollet, Chair; Duerr, Vice Chair; Appleton, Goehner and Senn.

Minority Report: Do not pass. Signed by 1 member: Representative Kraft, Ranking Minority Member.

Staff: Elizabeth Allison (786-7129).

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. 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 thermal panels, high efficiency air conditioning, and insulation. 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. A PACE assessment is attached to the property rather than the individual.

Special Assessments.
Special assessments, or benefit assessments, may be imposed on benefited 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 counties and private entities to provide financing to property owners. The financing must be used to provide qualified building improvements.

Qualified Improvement.
"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 and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking; or (3) increase resilience, including but not limited to seismic retrofits, flood mitigation, storm water management, wildfire and wind resistance, energy storage, and microgrids.

A county establishing a C-PACER program may narrow the definition of "qualified improvements" to be consistent with its climate goals.

Local Jurisdictions.
In order 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.

Program Handbook.
Each local jurisdiction that establishes a C-PACER program must prepare a program guidebook that includes, at minimum:
- a map showing the boundaries of the region;
- a sample contract between the county, the property owner, and the 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; and
- a procedure for collecting the proposed assessment including whether the collection of assessments is 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.

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 county 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 county may enter into a contract with a property owner to impose an assessment to repay assessments and C-PACER financing for a project, the county must receive written consent 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 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 that reflects 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 the administration and collection of the 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.

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.

Counties 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 to administer a C-PACER program available to counties.

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 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. In addition, the COM may establish a loan loss reserve or credit enhancement program to support financing of qualified projects.

Commercial Property Assessed Clean Energy and Resiliency Assessments for Repayment. A county 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.

Commercial Property Assessed Clean Energy and Resiliency 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 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 county, 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 county 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 county 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 to the substitute bill that:

- allow a county establishing a C-PACER program to narrow the definition of "qualified improvements" to be consistent with its climate goals;
- adds reducing or eliminating lead from water which may be used for drinking or cooking to the definition of qualified improvement; and
- changes the title in which the act is codified from Title 35 RCW to Title 36 RCW.

Appropriation: None.

Fiscal Note: Available.

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) Many property owners own a building for around five years before selling, which can disincentivize efficient improvements. Participation in PACE programs is voluntary. There are many unreinforced masonry buildings and older buildings. The state should enable the program and let counties decide if it would be a fit. Carbon reduction efforts and energy conservation efforts are already being done for lower cost improvements, but property owners may not have the capital for big improvements. Many old, unreinforced buildings need retrofitting. The PACE programs have been successful in other states and help with clean energy and provide jobs. In buildings where tenants pay the utilities, the property owner is often unwilling to update the property because the owner is not paying for the utilities. Tenants are also not likely to invest in improvements on property they do not own. Property Assessed Clean Energy programs provide long-term financing for these improvements. Architects know how to design and retrofit resilient buildings that are energy efficient, but cost is an issue. There is payback on energy efficiency over time in lower utility bills and lower output. The lien attaches to the property as opposed to the improvement. Liens on improvements match the life of the improvement, and financing is often five to 10 years of chattel attachment and can have high rates and risk. Commercial owners will not want to undertake improvements under that type of financing. Low up-front costs that attach to the property are good. Property Assessed Clean Energy financing allows people to overcome steep up-front costs. Property Assessed Clean Energy financing is extending a well-known policy mechanism of public infrastructure funded by bonds issued by private entities. Property Assessed Clean Energy uses private funds. Public funds are not necessary. Property Assessed Clean Energy programs spur the economy by encouraging improvements. Property Assessed Clean Energy programs appeal to property owners because debt does not show up on the owner's balance sheet. Tenants reap the most benefit from mitigation to reduce the impacts. Improvements could make properties more valuable by reducing costs. It can be difficult for old buildings to keep up with seismic updates.

(Opposed) There is a risk of piercing the veil of the foreclosure process. The lien survives the foreclosure process, which is a risk for the public if the county obtains the property. Collecting private debt on a public document has never been done before. The survival of the lien in the foreclosure process will suppress possible bid prices if the property goes up for auction.

Persons Testifying: (In support) Representative Duerr, prime sponsor; Barb Graff, City of Seattle; Rod Kauffman, Building Owners and Managers Association; Bonnie Frye Hemphill, Solar Installers of Washington; Erik Makinson, Resource Synergy; Kirsten Smith, American Institute of Architects; Alan Crain, Kitsap Bank; Genevieve Sherman, Greenworks Lending; Noah Reandeau, Northwest Energy Efficiency Council; Amy Wheeless, NW Energy Coalition; Court Olson, Optimum Building Consultants; Kraig Stevenson, International Code Council; Phyllis Farrell, League of Women Voters; and Suzie Hanson, Washington Federation of Independent Seattle Schools.

(Opposed) Jeff Gadman, Washington Association of County Treasurers and Washington Association of County Officials; and Arny Davis, Lewis County Treasurers' Office.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 23 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Caldier, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Steele, Sutherland, Tarleton and Ybarra.

Minority Report: Do not pass. Signed by 8 members: Representatives Rude, Assistant Ranking Minority Member; Chandler, Chopp, Kraft, Mosbrucker, Schmick, Sullivan and Tharinger.

Minority Report: Without recommendation. Signed by 1 member: Representative Hudgins.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Local Government:

The second substitute bill makes the following changes:

- The provision permitting the COM to establish a loan loss reserve or credit enhancement program if determined to be appropriate is removed.
- Language is added to specify that neither the state nor any county is required to use public funds to fund or repay the assessment amount authorized through a C-PACER program.
- Language is added to the intent section stating how qualified improvements would provide benefit to the public.

When a county chooses to contract with the COM or a subcontractor to administer its C-PACER program, enforcement of delinquent assessment or C-PACER financing installment payments is assigned to a capital provider, rather than the county.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second 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) Much of the state's building stock needs improvements for energy efficiency, clean energy, and resilience purposes. However, many building owners cannot afford to make these improvements. This bill would make the financing process less onerous. It will also assist in the implementation of the Clean Buildings Act passed in the 2019 Legislative Session. The bill promotes public-private partnerships and would provide public and private benefits. Other states have passed this kind of legislation, and there is a network of state officials who implement similar programs. The state may be able to benefit from other states' experiences and see savings when implementing the program.

(Opposed) County treasurers support the concepts of the bill but have serious concerns. The bill would add a new private debt collection component for counties. This has not been done before and should be done very carefully. Counties are also concerned that the liens for the C-PACER loans would survive property tax foreclosure. This would be the only time a private lien would survive a property tax foreclosure and would give the lien better status than child support payments or payments related to civil action judgments. Existing laws could be used as the basis for new language around these liens.

Persons Testifying: (In support) Court Olson, Shift Zero.

(Opposed) Jeff Gadman, Washington State Association of County Treasurers.

Persons Signed In To Testify But Not Testifying: None.