HOUSE BILL REPORT
HB 2405

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: House Committee on Appropriations (originally sponsored by 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].

Brief Summary of 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 (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 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).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not 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. 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 CPACE). 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 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 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.

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: 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.

(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 Emergency Management; Phyllis Farrell, League of Women Voters; Craig Stevenson, International Code Council; Erik Makinson, Resource Synergy; Amy Wheeless, NW Energy Coalition; Rod Kauffman, Building Owners & Managers Association; Court Olson, Optimum Building Consultants; Kirsten Smith, American Institute of Architects; Bonnie Frye Hemphill, Solar Installers of Washington; Genevieve Sherman, Greenworks Lending; Noah Reandeau, Northwest Energy Efficiency Council; and Alan Crain, Kitsap Bank.

(Opposed) Jeff Gadman, Thurston County Treasurer; and Arny Davis, Lewis County Treasurer

Persons Signed In To Testify But Not Testifying:
None.