
SUBSTITUTE HOUSE BILL 1796

State of Washington

66th Legislature

2019 Regular Session

By House Local Government (originally sponsored by Representatives Doglio, Fitzgibbon, Shewmake, Peterson, Lekanoff, Pettigrew, Goodman, Walen, Slatter, Appleton, Macri, and Tarleton)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to commercial property assessed clean energy and
2 resilience; and adding a new chapter to Title 35 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
5 efficiency and resiliency of buildings in Washington is essential for
6 ensuring the health and safety of residents, employees, and tenants;
7 for using water and energy more efficiently; and for economic
8 development of our communities. Buildings in Washington have
9 significant needs for resiliency retrofits, including seismic
10 improvements, stormwater management, flood mitigation, wildfire and
11 wind resistance, and for clean energy and energy efficiency
12 improvements, but these improvements often have high up-front capital
13 costs.

14 (2) This chapter authorizes the establishment of a commercial
15 property assessed clean energy and resiliency ("C-PACER") program
16 that jurisdictions can voluntarily implement to ensure that free and
17 willing owners of agricultural, commercial, and industrial properties
18 and of multifamily residential properties with five or more dwelling
19 units can obtain low-cost, long-term financing for qualifying
20 improvements, including energy efficiency, water conservation,
21 renewable energy, and resiliency projects. These improvements would

1 be repaid through the local property tax assessment billing process
2 without the accumulation of cost to the municipality and without the
3 creation of a personal debt obligation to the property owner. The
4 debt obligation would instead be carried by the property and remain
5 with the property until repaid, regardless of any potential transfer
6 of property ownership.

7 (3) The legislature declares that the establishment and operation
8 of a C-PACER program under this chapter serves a valid public purpose
9 and is in the public interest. Accordingly, the governing body of a
10 municipality may determine that it is convenient and advantageous to
11 establish a program under this chapter.

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

15 (1) "Assessment" means the voluntary contract entered into by the
16 property owner and a municipality under this chapter that is recorded
17 on the land records.

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

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

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

26 (5) "C-PACER lien" means the lien that the municipality records
27 on the eligible property pursuant to the assessment and related
28 documents.

29 (6) "Eligible property" means privately owned commercial,
30 industrial, or agricultural real property or multifamily residential
31 real property with five or more dwelling units. Eligible property may
32 be owned by any type of business, corporation, individual, or
33 nonprofit organization permitted by state law.

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

1 (8) "Municipality" means a county, city, or town or
2 unincorporated territories of those jurisdictions.

3 (9) "Program" means a C-PACER administrative mechanism
4 established under this chapter.

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

10 (11) "Qualified improvement" means a permanent improvement
11 affixed to real property and intended to: (a) Decrease energy
12 consumption or demand through the use of efficiency technologies,
13 products, or activities that reduce or support the reduction of
14 energy consumption, allow for the reduction in demand, or support the
15 production of clean, renewable energy, including but not limited to a
16 product, device, or interacting group of products or devices on the
17 customer's side of the meter that generates electricity, provides
18 thermal energy, or regulates temperature; (b) decrease water
19 consumption or demand through the use of efficiency technologies,
20 products, or activities that reduce or support the reduction of water
21 consumption or allow for the reduction in demand; or (c) increase
22 resilience, including but not limited to seismic retrofits, flood
23 mitigation, stormwater management, wildfire and wind resistance,
24 energy storage, and microgrids.

25 (12) "Qualified project" means the installation or modification
26 of a qualified improvement, including new construction or the
27 adaptive reuse of eligible property with a qualified improvement.

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

30 NEW SECTION. **Sec. 3.** (1) In order to establish a program under
31 this chapter, the governing body of a municipality must take the
32 following actions:

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

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

37 (ii) A statement that the municipality intends to make
38 assessments to repay C-PACER financing for qualified projects
39 available to owners of eligible property;

1 (iii) A description of the region in which the program is
2 offered, which: (A) May include the entire municipality, which, for a
3 county, may include both unincorporated and incorporated territory,
4 and (B) must be located wholly within the municipality's
5 jurisdiction;

6 (iv) A municipality may designate more than one region. If
7 multiple regions are designated, the regions may be separate,
8 overlapping, or coterminous;

9 (v) A description of how the municipality will bill, collect, and
10 remit payments currently due to capital providers under the financing
11 agreement, if this option is available;

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

15 (vii) A description of the process to create a program guidebook
16 to be prepared under section 8 of this act and a statement
17 identifying where the program guidebook is available for public
18 inspection; and

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

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

24 (2) For the purposes of subsection (1)(a)(viii) of this section,
25 the resolution or ordinance may incorporate the program guidebook or
26 any amended versions of the program guidebook, as appropriate, by
27 reference.

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

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

33 (b) Permit fees;

34 (c) Inspection fees;

35 (d) Lender's fees;

36 (e) Program application and administrative fees;

37 (f) Project development and engineering fees;

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

39 (h) Capitalized interest;

1 (i) Interest reserves;
2 (j) Escrow for prepaid property taxes and insurance; or
3 (k) Any other fees or costs that may be incurred by the property
4 owner incident to the installation, modification, or improvement on a
5 specific or pro rata basis.

6 (2) In order to administer a program established under section 3
7 of this act, a municipality may impose fees to offset costs related
8 to administering the program, including the costs of a third-party
9 administrator:

10 (a) The fees required by this subsection may be imposed as an
11 application fee paid by the property owner requesting to participate
12 in the program expressed as a set amount, a percentage of the
13 assessment amount, or in any other manner that reflects the just and
14 reasonable cost of administering the assessment to the municipality
15 for its administration of the program or any contracted program
16 administrator; and

17 (b) Program fees allowed in this subsection and included in the
18 total C-PACER financing must not exceed the actual costs of qualified
19 project approval and management incurred by the municipality or any
20 contracted program administrator.

21 NEW SECTION. **Sec. 5.** The governing body of a municipality may,
22 in accordance with chapter 39.34 RCW, contract with the governing
23 body of another municipality or taxing district, as that term is
24 defined in RCW 84.04.120, or another entity, including a county
25 treasurer, to perform the duties of the municipality relating to the
26 administration and collection of the assessments imposed by the
27 municipality under this chapter. Enforcement of delinquent assessment
28 or C-PACER financing installment payments, including foreclosure,
29 shall remain the responsibility of the municipality itself, in
30 accordance with section 13 of this act.

31 NEW SECTION. **Sec. 6.** (1) Any combination of municipalities may
32 agree to jointly implement or administer a program under this
33 chapter.

34 (2) If two or more municipalities implement a program jointly, a
35 single public hearing held jointly by the cooperating municipalities
36 is sufficient to satisfy the requirements of this chapter.

37 (3) One or more municipalities may contract with a third party,
38 including another municipality, to administer a program. Enforcement

1 of delinquent assessment or C-PACER financing installment payments,
2 including foreclosure, shall remain the responsibility of the
3 municipality itself, in accordance with section 13 of this act.

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

8 (2) The governing body of a municipality may, in accordance with
9 chapter 39.34 RCW, contract with the department of commerce, or its
10 subcontractor, to implement and perform the duties of administering a
11 program under this chapter that may be available to municipalities
12 statewide. Enforcement of delinquent assessment or C-PACER financing
13 installment payments, including foreclosure, shall remain the
14 responsibility of the municipality itself, or may be assigned to the
15 capital provider as set forth in section 13(6) of this act.

16 (3) The department of commerce may contract with a third party,
17 including another municipality, to administer a program that is
18 available on a voluntary basis to municipalities statewide, provided
19 that:

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

23 (b) The contracted program administrator runs the statewide
24 program available to municipalities statewide efficiently and
25 transparently, including by:

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

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

34 (iii) Disclosing to the public if the contracted program
35 administrator has a financial interest in any of the services
36 provided to property owners;

37 (iv) Allowing financial underwriting and evaluation to be
38 performed by capital providers; and

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

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

8 (5) To the extent that funding is appropriated specifically for
9 the purposes of this section, the department of commerce shall
10 allocate appropriated funds to cover start-up costs associated with
11 the voluntary statewide program over the course of the first twenty-
12 four months following the designation of a contracted program
13 administrator, including but not limited to program promotion and
14 contractor education, a stakeholder collaboration process outlined in
15 subsection (3)(b)(v) of this section, and early program costs before
16 the contracted program administrator becomes self-sustaining.

17 (6) Subject to available appropriations, the department of
18 commerce may establish a loan loss reserve or credit enhancement
19 program to support financing of qualified projects issued under this
20 section, should the agency determine that such a credit enhancement
21 program is appropriate.

22 NEW SECTION. **Sec. 8.** (1) Before establishing a program under
23 this chapter, the governing body of a municipality, or the governing
24 body's designee, must prepare a program guidebook that includes, at
25 minimum:

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

28 (b) A sample form bilateral or triparty contract or contracts, as
29 appropriate, between the municipality, the property owner, and the
30 capital provider specifying the terms of:

31 (i) An assessment under the program; and

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

33 (c) A statement identifying a municipal office, agency, or
34 authorized third party to enter into written contracts on behalf of
35 the municipality;

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

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

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

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

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

9 (i) The procedures for collecting the proposed assessment,
10 including whether the municipality assigns collection and enforcement
11 to a capital provider, as provided in sections 7(2) and 13(6) of this
12 act.

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

15 (a) On the municipality's web site; or

16 (b) On the web site of the municipality's designated program
17 administrator.

18 NEW SECTION. **Sec. 9.** (1) Before a municipality may enter into a
19 written contract with a record owner of any eligible property to
20 impose an assessment to repay the C-PACER financing of a qualified
21 project under this chapter, the municipality, or its program
22 administrator, must receive written consent from any holder of a
23 lien, mortgage, or security interest in the real property that the
24 property may participate in the program.

25 (2) Before a municipality may enter into a written contract with
26 a record owner of any multifamily residential real property with five
27 or more dwelling units to impose an assessment to repay the C-PACER
28 financing of a qualified project under this chapter, the
29 municipality, or its program administrator, must also receive written
30 consent from any and all holders of affordable housing covenants,
31 restrictions, or regulatory agreements in the real property that the
32 property may participate in the program.

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

37 (a) For an existing building: (i) Where energy or water usage
38 improvements are proposed, certification by a licensed professional

1 engineer, or other professional listed in the program guidebook,
2 stating that the proposed qualified improvements will either result
3 in more efficient use or conservation of energy or water, result in
4 the reduction of greenhouse gas emissions, or result in the addition
5 of renewable sources of energy or water, or (ii) where resilience
6 improvements are proposed, certification by a licensed professional
7 engineer stating that the qualified improvements will result in
8 improved resilience.

9 (b) For new construction, certification by a licensed
10 professional engineer stating that the proposed qualified
11 improvements will enable the project to exceed the energy efficiency
12 or water efficiency or renewable energy or renewable water or
13 resilience requirements of the current building code.

14 (2) After a qualified project is completed, the municipality must
15 require written verification from one or more qualified independent
16 third parties, as defined in the program guidebook, stating that the
17 qualified project was properly completed and is operating as intended
18 in the documentation provided under subsection (1) of this section.

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

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

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

26 NEW SECTION. **Sec. 12.** (1) A municipality that authorizes
27 financing through assessments under this chapter must record written
28 notice of each assessment in the real property records of the county
29 in which the property is located.

30 (2) The recording under subsection (1) of this section must
31 contain:

32 (a) The assessment amount;

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

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

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

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

4 (a) Is a first and prior lien against the real property on which
5 the assessment is imposed from the date on which the notice of
6 contractual agreement is recorded until the assessment, interest,
7 penalty, and charges accrued or accruing are paid; and

8 (b) Shall take precedence over all other liens or encumbrances
9 except a lien for ad valorem taxes of the municipality on real
10 property, which lien for taxes shall have priority over such benefit
11 assessment lien, provided existing mortgage holder(s), if any, has
12 provided written consent described in section 9 of this act.

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

16 (3) The assessment shall be enforced by the municipality in the
17 same manner that the collection of delinquent real property taxes are
18 enforced by the municipality under chapter 84.64 RCW.

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

21 (5) A municipality may recover costs and expenses, including
22 attorneys' fees, in a suit to collect a delinquent installment of an
23 assessment in the same manner as in a suit to collect a delinquent
24 property tax.

25 (6) Alternatively, any time after the assessment is recorded, any
26 participating municipality may assign to the capital provider any and
27 all C-PACER liens filed by the tax authority, as provided in the
28 written agreement between the participating municipality and the
29 capital provider. The capital provider may sell or assign, for
30 consideration, any and all liens received from the participating
31 municipality. The capital provider or their assignee shall have and
32 possess the same powers and rights at law or in equity as the
33 participating municipality and its tax authority would have had if
34 the lien had not been assigned with regard to the precedence and
35 priority of such lien, the accrual of interest and the fees and
36 expenses of collection. The capital provider or their assignee shall
37 have the same rights to enforce such liens as any private party
38 holding a lien on real property, including, but not limited to,
39 foreclosure and a suit on the debt. Interest and penalties shall
40 accrue on delinquent installments in the same manner as property

1 taxes. Costs and reasonable attorneys' fees may be collected by the
2 assignee at any time after demand for payment has been made by the
3 assignee.

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

8 NEW SECTION. **Sec. 14.** A municipality that establishes a region
9 under this chapter may not:

10 (1) Make the issuance of a permit, license, or other
11 authorization from the municipality to a person who owns property in
12 the region contingent on the person entering into a written contract
13 to repay the financing of a qualified project through assessments
14 under this chapter; or

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

18 NEW SECTION. **Sec. 15.** The members of the governing body of a
19 municipality, employees of a municipality, and board members,
20 executives, employees, and contractors of a third party who enter
21 into a contract with a municipality to provide administrative
22 services for a program under this chapter are not personally liable
23 as a result of exercising any rights or responsibilities granted
24 under this chapter.

25 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
26 constitute a new chapter in Title 35 RCW.

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