
SECOND SUBSTITUTE HOUSE BILL 2405

State of Washington

66th Legislature

2020 Regular Session

By House Appropriations (originally sponsored by Representatives Duerr, Barkis, Fitzgibbon, Shewmake, Hoff, Kloba, Corry, Gildon, Ybarra, Jenkin, Pollet, and Doglio)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to commercial property assessed clean energy and
2 resilience; and adding a new chapter to Title 36 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 county 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. A qualified improvement as defined in
10 section 2 of this act would provide benefit to the public, either in
11 the form of energy or water resource conservation, reduced public
12 health risk, or reduced public emergency response risk. Accordingly,
13 the governing body of a county may determine that it is convenient
14 and advantageous to establish a program under this chapter.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires
17 otherwise.

18 (1) "Assessment" means the voluntary contract entered into by the
19 property owner and a county under this chapter that is recorded on
20 the land records.

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

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

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

29 (5) "C-PACER lien" means the lien that the county records on the
30 eligible property pursuant to the assessment and related documents.

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

36 (7) "Financing agreement" means the contract under which a
37 property owner agrees to repay a capital provider for the C-PACER
38 financing including, but not limited to, details of any finance

1 charges, fees, debt servicing, and any terms relating to treatment of
2 prepayment and partial payment of the C-PACER financing.

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

5 (9) "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 (10) "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 and address safe drinking water through the use
20 of efficiency technologies, products, or activities that reduce or
21 support the reduction of water consumption, allow for the reduction
22 in demand, or reduce or eliminate lead from water which may be used
23 for drinking or cooking; or (c) increase resilience, including but
24 not limited to seismic retrofits, flood mitigation, stormwater
25 management, wildfire and wind resistance, energy storage, and
26 microgrids.

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

30 (12) "Region" means a geographical area as defined in section 4
31 of this act.

32 NEW SECTION. **Sec. 3.** A county establishing a C-PACER program
33 pursuant to this act may narrow the definition of "qualified
34 improvements" to be consistent with the county's climate goals.

35 NEW SECTION. **Sec. 4.** (1) In order to establish a program under
36 this chapter, the governing body of a county must take the following
37 actions:

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

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

4 (ii) A statement that the county intends to make assessments to
5 repay C-PACER financing for qualified projects available to owners of
6 eligible property;

7 (iii) A description of the region in which the program is
8 offered, which: (A) May include the entire county, which may include
9 both unincorporated and incorporated territory, and (B) must be
10 located wholly within the county's jurisdiction;

11 (iv) A county may designate more than one region. If multiple
12 regions are designated, the regions may be separate, overlapping, or
13 coterminous;

14 (v) A description of how the county will bill, collect, and remit
15 payments currently due to capital providers under the financing
16 agreement, if this option is available;

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

20 (vii) A description of the process to create a program guidebook
21 to be prepared under section 9 of this act and a statement
22 identifying where the program guidebook is available for public
23 inspection; and

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

26 (b) Hold a public hearing at which the public may comment on the
27 proposed program, including the program guidebook prepared under
28 section 9 of this act.

29 (2) For the purposes of subsection (1)(a)(viii) of this section,
30 the resolution or ordinance may incorporate the program guidebook or
31 any amended versions of the program guidebook, as appropriate, by
32 reference.

33 NEW SECTION. **Sec. 5.** (1) The C-PACER financing for which
34 assessments are imposed through a program established under this
35 chapter may include:

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

38 (b) Permit fees;

39 (c) Inspection fees;

1 (d) Lender's fees;
2 (e) Program application and administrative fees;
3 (f) Project development and engineering fees;
4 (g) Third-party review fees, including verification review fees;
5 (h) Capitalized interest;
6 (i) Interest reserves;
7 (j) Escrow for prepaid property taxes and insurance; or
8 (k) Any other fees or costs that may be incurred by the property
9 owner incident to the installation, modification, or improvement on a
10 specific or pro rata basis.

11 (2) In order to administer a program established under section 4
12 of this act, a county may impose fees to offset costs related to
13 administering the program, including the costs of a third-party
14 administrator:

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

22 (b) Program fees allowed in this subsection and included in the
23 total C-PACER financing must not exceed the actual costs of qualified
24 project approval and management incurred by the county or any
25 contracted program administrator.

26 NEW SECTION. **Sec. 6.** The governing body of a county may, in
27 accordance with chapter 39.34 RCW, contract with the governing body
28 of another county or taxing district, as that term is defined in RCW
29 84.04.120, or another entity, including a county treasurer, to
30 perform the duties of the county relating to the administration and
31 collection of the assessments imposed by the county under this
32 chapter. Enforcement of delinquent assessment or C-PACER financing
33 installment payments, including foreclosure, shall remain the
34 responsibility of the county itself, in accordance with section 14 of
35 this act.

36 NEW SECTION. **Sec. 7.** (1) Any combination of counties may agree
37 to jointly implement or administer a program under this chapter.

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

4 (3) One or more counties may contract with a third party,
5 including another county, to administer a program. Enforcement of
6 delinquent assessment or C-PACER financing installment payments,
7 including foreclosure, shall remain the responsibility of the county
8 itself, in accordance with section 14 of this act.

9 NEW SECTION. **Sec. 8.** (1) Subject to available appropriations,
10 the department of commerce shall establish a voluntary statewide C-
11 PACER program to administer the approval and municipal recordation of
12 qualified improvements.

13 (2) The governing body of a county may, in accordance with
14 chapter 39.34 RCW, contract with the department of commerce, or its
15 subcontractor, to implement and perform the duties of administering a
16 program under this chapter that may be available to counties
17 statewide. Enforcement of delinquent assessment or C-PACER financing
18 installment payments, including foreclosure, shall be assigned to the
19 capital provider as set forth in section 14(6) of this act.

20 (3) The department of commerce may contract with a third party,
21 including another county, to administer a program that is available
22 on a voluntary basis to counties statewide, provided that:

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

26 (b) The contracted program administrator runs the statewide
27 program available to counties statewide efficiently and
28 transparently, including by:

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

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

37 (iii) Disclosing to the public if the contracted program
38 administrator has a financial interest in any of the services
39 provided to property owners;

1 (iv) Allowing financial underwriting and evaluation to be
2 performed by capital providers; and

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

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

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

19 NEW SECTION. **Sec. 9.** (1) Before establishing a program under
20 this chapter, the governing body of a county, or the governing body's
21 designee, must prepare a program guidebook that includes, at minimum:

22 (a) A map showing the boundaries of the region designated in
23 accordance with section 4 of this act;

24 (b) A sample form bilateral or triparty contract or contracts, as
25 appropriate, between the county, the property owner, and the capital
26 provider specifying the terms of:

27 (i) An assessment under the program; and

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

29 (c) A statement identifying a county office, agency, or
30 authorized third party to enter into written contracts on behalf of
31 the county;

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

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

38 (f) A statement explaining the lender consent requirement
39 provided in section 10 of this act;

1 (g) A statement explaining the review requirement provided by
2 section 11 of this act;

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

5 (i) The procedures for collecting the proposed assessment,
6 including how the county assigns collection and enforcement to a
7 capital provider, as provided in sections 8(2) and 14(6) of this act.

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

10 (a) On the county's web site; or

11 (b) On the web site of the county's designated program
12 administrator.

13 NEW SECTION. **Sec. 10.** (1) Before a county may enter into a
14 written contract with a record owner of any eligible property to
15 impose an assessment to repay the C-PACER financing of a qualified
16 project under this chapter, the county, or its program administrator,
17 must receive written consent from any holder of a lien, mortgage, or
18 security interest in the real property that the property may
19 participate in the program.

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

28 NEW SECTION. **Sec. 11.** (1) A program established under this
29 chapter must require for each proposed qualified project the
30 following documentation as well as any documentation further
31 specified in the program guidebook:

32 (a) For an existing building: (i) Where energy or water usage
33 improvements are proposed, certification by a licensed professional
34 engineer, or other professional listed in the program guidebook,
35 stating that the proposed qualified improvements will either result
36 in more efficient use or conservation of energy or water, result in
37 the reduction of greenhouse gas emissions, or result in the addition
38 of renewable sources of energy or water, or (ii) where resilience

1 improvements are proposed, certification by a licensed professional
2 engineer stating that the qualified improvements will result in
3 improved resilience.

4 (b) For new construction, certification by a licensed
5 professional engineer stating that the proposed qualified
6 improvements will enable the project to exceed the energy efficiency
7 or water efficiency or renewable energy or renewable water or
8 resilience requirements of the current building code.

9 (2) After a qualified project is completed, the county must
10 require written verification from one or more qualified independent
11 third parties, as defined in the program guidebook, stating that the
12 qualified project was properly completed and is operating as intended
13 in the documentation provided under subsection (1) of this section.

14 NEW SECTION. **Sec. 12.** The proposed C-PACER financing for a
15 qualified project may authorize the property owner to:

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

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

21 NEW SECTION. **Sec. 13.** (1) A county that authorizes financing
22 through assessments under this chapter must record written notice of
23 each assessment in the real property records of the county in which
24 the property is located.

25 (2) The recording under subsection (1) of this section must
26 contain:

27 (a) The assessment amount;

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

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

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

31 NEW SECTION. **Sec. 14.** (1) The assessment amount under this
32 chapter plus any interest, penalties, and charges accrued or accruing
33 on the assessment:

34 (a) Shall take precedence over all other liens or encumbrances
35 except a lien for ad valorem taxes imposed by a local government on
36 real property, which lien for taxes shall have priority over such
37 benefit assessment lien, provided existing mortgage holder(s), if

1 any, has provided written consent described in section 10 of this
2 act; and

3 (b) Is a first and prior lien, second only to a lien for ad
4 valorem taxes imposed by a local government against the real property
5 on which the assessment is imposed, from the date on which the notice
6 of contractual agreement is recorded until the assessment, interest,
7 penalty, and charges accrued or accruing are paid.

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

11 (3) The assessment shall be enforced by the county in the same
12 manner that the collection of delinquent real property taxes is
13 enforced by the county under chapter 84.64 RCW.

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

16 (5) A county may recover costs and expenses, including attorneys'
17 fees, in a suit to collect a delinquent installment of an assessment
18 in the same manner as in a suit to collect a delinquent property tax.

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

37 (7) After the notice of an assessment is recorded as provided in
38 section 13 of this act, the C-PACER lien may not be contested on the
39 basis that the improvement is not a qualified improvement or that the
40 project is not a qualified project.

1 NEW SECTION. **Sec. 15.** A county that establishes a region under
2 this chapter may not:

3 (1) Make the issuance of a permit, license, or other
4 authorization from the county to a person who owns property in the
5 region contingent on the person entering into a written contract to
6 repay the financing of a qualified project through assessments under
7 this chapter; or

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

11 NEW SECTION. **Sec. 16.** The members of the governing body of a
12 county, employees of a county, and board members, executives,
13 employees, and contractors of a third party who enter into a contract
14 with a county to provide administrative services for a program under
15 this chapter are not personally liable as a result of exercising any
16 rights or responsibilities granted under this chapter.

17 NEW SECTION. **Sec. 17.** No section under this chapter shall be
18 interpreted to require a county to enforce any privately financed
19 debt, apart from the assessment amount which is authorized through a
20 program created under this chapter. No section under this chapter
21 shall be interpreted to require a county or the state to use public
22 funds to fund or repay the assessment amount which is authorized
23 through a program created under this chapter.

24 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act
25 constitute a new chapter in Title 36 RCW.

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