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HOUSE BILL 2405

State of Washington 66th Legislature 2020 Regular Session

By Representatives Duerr, Barkis, Fitzgibbon, Shewmake, Hoff, Kloba, Corry, Gildon, Ybarra, Jenkin, Pollet, and Doglio

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Qualified improvement" means a permanent improvement affixed to real property and intended to: (a) 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; (b) 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 (c) increase resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.

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

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

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

(a) Adopt a resolution or ordinance that includes:

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

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

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

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

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

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

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

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

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

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

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

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

(b) Permit fees;

(c) Inspection fees;

(d) Lender's fees;

(e) Program application and administrative fees;

(f) Project development and engineering fees;

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

(h) Capitalized interest;

(i) Interest reserves;

(j) Escrow for prepaid property taxes and insurance; or

(k) Any other fees or costs that may be incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis.

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

(a) The fees required by this subsection may be imposed as an application fee paid by the property owner requesting to participate in the program expressed as a set amount, 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; and

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

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

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

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

(3) One or more counties may contract with a third party, including another county, to administer a program. Enforcement of delinquent assessment or C-PACER financing installment payments, including foreclosure, shall remain the responsibility of the county itself, in accordance with section 13 of this act.

NEW SECTION. **Sec. 7.** (1) Subject to available appropriations, the department of commerce shall establish a voluntary statewide C-

PACER program to administer the approval and municipal recordation of qualified improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) An assessment under the program; and

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

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

(d) 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;

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

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

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

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

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

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

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

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

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

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

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

(a) For an existing building: (i) Where energy or water usage improvements are proposed, certification by a licensed professional engineer, or other professional listed in the program guidebook, stating 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 (ii) where resilience improvements are proposed, certification by a licensed professional engineer stating that the qualified improvements will result in improved resilience.

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

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

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

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

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

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

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

(a) The assessment amount;

(b) The legal description of the eligible property;

(c) The name of each property owner; and

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

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

(a) Shall take precedence over all other liens or encumbrances except a lien for ad valorem taxes imposed by a local government on real property, which lien for taxes shall have priority over such benefit assessment lien, provided existing mortgage holder(s), if any, has provided written consent described in section 9 of this act; and

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

(2) The 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.

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

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

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

(6) Alternatively, any time after the assessment is recorded, any participating county may assign to the capital provider any and all C-PACER liens filed by the tax authority, as provided in the written agreement between the participating county and the capital provider. The capital provider may sell or assign, for consideration, any and all liens received from the participating county. The capital provider or their assignee shall have and possess the same powers and rights at law or in equity as the participating county and its tax authority would have had if the lien had not been assigned 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, including, but not limited to, foreclosure and a suit on the debt. Interest and penalties shall accrue on delinquent installments in the same manner as property taxes. Costs and reasonable attorneys' fees may be collected by the assignee at any time after demand for payment has been made by the assignee.

(7) After the notice of an assessment is recorded as provided in section 12 of this act, 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.

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

(1) Make 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 written contract to repay the financing of a qualified project through assessments under this chapter; or

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

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

NEW SECTION. **Sec. 16.** No section under this chapter shall be interpreted to require a county to enforce any privately financed debt, apart from the assessment amount which is authorized through a program created under this chapter.

NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act constitute a new chapter in Title 35 RCW.

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