

HOUSE BILL REPORT

SSB 5862

As Passed House:

March 4, 2022

Title: An act relating to technical changes to the commercial property assessed clean energy and resiliency program.

Brief Description: Concerning technical changes to the commercial property assessed clean energy and resiliency program.

Sponsors: Senate Committee on Housing & Local Government (originally sponsored by Senators Lovelett, Rivers, Fortunato, Gildon, Kuderer, Lovick, Nguyen, Nobles, Stanford, Wilson, C. and Wilson, J.).

Brief History:

Committee Activity:

Local Government: 2/16/22, 2/18/22 [DP].

Floor Activity:

Passed House: 3/4/22, 95-3.

Brief Summary of Substitute Bill

- Clarifies the responsibilities of a capital provider of Commercial Property Assessed Clean Energy and Resiliency (C-PACER) funds to include billing, collection, and enforcement of delinquent C-PACER liens or C-PACER assessment installments.
- Authorizes a C-PACER lien to be foreclosed in the same manner as a mortgage lien rather than in the same manner as delinquent property taxes.
- Specifies the order in which proceeds of the foreclosure sale of the property must be applied.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: Do pass. Signed by 6 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg and Robertson.

Staff: Elizabeth Allison (786-7129).

Background:

Commercial Property Assessed Clean Energy and Resiliency Program Overview.

The Legislature adopted a voluntary statewide Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program during the 2020 legislative session to provide a financing mechanism to encourage the installation of renewable energy systems and energy efficiency improvements to commercial and residential properties. The program authorized the Department of Commerce to establish a voluntary, statewide C-PACER program in which counties may choose to participate, and also authorized counties to establish separate voluntary, countywide C-PACER programs. The C-PACER program allows a property owner to finance the up-front cost of energy or other eligible improvements on a property through a capital provider and then pay the costs back over time through a property assessment.

Eligible Properties and Applicants.

Eligible properties include privately owned commercial, industrial, or agricultural real property or multifamily residential real property with five or more dwelling units. Criteria for determining an eligible project include whether the project provides a public benefit, including measuring or determining whether such projects will:

- reduce greenhouse gas emissions;
- be effective for reducing energy;
- be appropriate to meet seismic risks;
- reduce stormwater or pollution; or
- reduce the risk of wildfire, flooding, or other natural or human-caused disaster.

Applicants for C-PACER financing must demonstrate at minimum:

- that the project provides a public benefit in the form of energy or water resource conservation, reduced public health risk, or reduced public emergency response risk;
- for an existing building, certification by an engineer or other professional listed in the program guidebook that: (1) where energy or water usage improvements are proposed, the proposed qualified improvements will 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, the qualified improvements will result in improved resilience; and
- for new construction, certification by an engineer 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.

Commercial Property Assessed Clean Energy and Resiliency Liens.

Counties must record each C-PACER lien in the real property records of the county. The county must also record the assignment of the C-PACER lien from the county to the appropriate capital provider. A C-PACER lien takes precedence over all other liens or encumbrances except a lien for taxes on the property imposed by the state, a local government, or a junior taxing district. Each C-PACER lien runs with the land, and that portion of the C-PACER lien that has not yet become due is not accelerated or eliminated by foreclosure of a property tax lien.

Collection and enforcement of a C-PACER lien or C-PACER financing installment payments, including foreclosure, is the responsibility of the capital provider. The lien must be enforced by the capital provider after one year from the date of delinquency in the same manner as delinquent property taxes, except that a sworn declaration by the capital provider attesting to the delinquency must be used in lieu of the certificate of delinquency.

The capital provider may sell or assign for consideration any and all C-PACER liens received from the participating county.

Before a capital provider may enter into a financing agreement to provide C-PACER financing of a qualified project, the capital provider 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 and that the C-PACER lien will take precedence over all other liens except for a lien for taxes imposed by the state, a local government, or junior taxing district.

County Credit.

A county may not enforce any privately financed debt and may not pledge, offer, or encumber the full faith and credit of the county. Neither the state nor any county may use public funds to fund or repay any loan between a capital provider and the property owner.

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 Bill:

The county must assign the assessment and Commercial Property Assessed Clean Energy and Resiliency (C-PACER) lien to the capital provider at the close of any approved C-PACER financing, and the lien maintains the same precedence and priority. The capital provider must enforce the lien any time after one year from the date of delinquency in the same manner as a mortgage lien. The sale of the property does not discharge or affect the priority of the lien with respect to installments not yet due and payable at the time of sale. The capital provider may not seek a deficiency judgment with respect to any unpaid assessment at the time of sale. A county sheriff may participate in a foreclosure action without violating limitations relating to the role of the county in enforcement of C-PACER liens.

The capital provider has the right to collect delinquent interest and penalties in accordance with the financing agreement during a foreclosure proceeding to collect delinquent C-PACER assessment installments and enforce a C-PACER lien. The capital provider must include the amount of any outstanding liens for taxes imposed by the state, local government, or junior taxing district against the real property which have priority over the C-PACER lien in any action to foreclose a C-PACER lien. The proceeds of the foreclosure sale of the property must be first applied to the outstanding liens for taxes imposed by the state, local government, or junior taxing district, and then applied to the delinquent assessments, interest, and penalties secured by the C-PACER lien.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The budget originally had funding for the Department of Commerce to develop a statewide Commercial Property Assessed Clean Energy and Resiliency (C-PACER) program, but COVID-19 caused that funding to be cut or reallocated. Capital providers have come forward with this bill to make sure the county does not take on too big of a role. Unlike traditional financing, C-PACER programs work by having the lien run with the title of the property rather than the property owner. The bill presents a very small technical fix that is important to capital providers. One testifying capital provider has projects lined up in Washington. The technical fix will make the duties regarding enforcement clear. The language of this bill was worked on with treasurers. To date, five counties have adopted ordinances establishing C-PACER programs. There are some ambiguities about certain enforcement features which resulted in each county structuring its program differently. Consistence and reliability are necessary to get the full benefit and lower cost to capital providers and property owners. County treasurers are in favor of C-PACER public policy.

The aim is to protect public dollars. When the time came to adopt a C-PACER policy, some ambiguity was discovered. An ordinance was adopted to fix the ambiguity, but it squelched member participation. The treasurers compromised on this bill and it works for everybody. If the bill passes the ordinance will be amended to match.

(Opposed) None.

Persons Testifying: Senator Liz Lovelett, prime sponsor; Michael Yaki, Petros Property Assessed Clean Energy Finance, LLC; Cliff Kellogg, Commercial Property Assessed Clean Energy Alliance; Elyssa Rothe, Nuveen Green Capital; and Jeff Gadman, Washington State Association of County Treasurers.

Persons Signed In To Testify But Not Testifying: None.