
SENATE BILL 5312

State of Washington

68th Legislature

2023 Regular Session

By Senators Lovelett, J. Wilson, Dhingra, Holy, Keiser, Nobles, Randall, Rolfes, Shewmake, Trudeau, and Wellman

Read first time 01/12/23. Referred to Committee on Local Government, Land Use & Tribal Affairs.

1 AN ACT Relating to creating a residential property assessed clean
2 energy and resiliency program; and adding a new chapter to Title 36
3 RCW.

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

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

15 (2) This chapter authorizes the establishment of a residential
16 property assessed clean energy and resiliency (R-PACER) program that
17 jurisdictions can voluntarily implement to ensure that free and
18 willing owners of single-family and multifamily residential
19 properties with four or fewer dwelling units can obtain low-cost,
20 long-term financing for qualifying improvements, including energy
21 efficiency, water conservation, clean energy, renewable energy, and

1 resiliency projects. These improvements are repaid by a voluntary
2 assessment on the property, secured by a county lien, and assigned to
3 a capital provider for all the administrative aspects of billing,
4 collecting, and enforcing the lien and without the accumulation of
5 cost to the county and without the creation of a personal debt
6 obligation to the property owner. The obligation is instead carried
7 by the property and remains with the property until repaid,
8 regardless of any potential transfer of property ownership. After the
9 adoption of an R-PACER program, a county's role is limited to the
10 approval of an assessment and recordation of an R-PACER lien, and
11 administration of the R-PACER program which may be contracted out to
12 a private third party.

13 (3) The legislature declares that the establishment and operation
14 of an R-PACER program by this act serves important public health and
15 safety interests. A qualified improvement as defined in RCW
16 36.165.010 provides benefit to the public, either in the form of
17 energy or water resource conservation, reduced public health risk, or
18 reduced public emergency response risk. Accordingly, the governing
19 body of a county is authorized to determine that it is convenient and
20 advantageous to adopt a program under this chapter.

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

24 (1) "Assessment" means the voluntary agreement of a property
25 owner to allow a county to place an annual assessment on their
26 property to repay R-PACER financing.

27 (2) "Capital provider" means any private entity, their designee,
28 successor, and assigns that makes or funds R-PACER financing under
29 this chapter.

30 (3) "Eligible property" means privately owned single-family
31 residential real property or multifamily residential real property
32 with four or fewer dwelling units. Eligible property may be owned by
33 any type of business, corporation, individual, or nonprofit
34 organization permitted by state law.

35 (4) "Financing agreement" means the contract under which a
36 property owner agrees to repay a capital provider for the R-PACER
37 financing including, but not limited to, details of any finance
38 charges, fees, debt servicing, accrual of interest and penalties, and

1 any terms relating to treatment of prepayment and partial payment of
2 the R-PACER financing.

3 (5) "Program" means an R-PACER program established under this
4 chapter.

5 (6) "Program administrator" means the party designated by a
6 county or the department of commerce to administer an R-PACER
7 program. This may be the department of commerce, the county itself,
8 or a third party, provided that the administration procedures used
9 conform to the requirements of this chapter.

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

15 (8) "Project application" means an application submitted to a
16 program to demonstrate that a proposed project qualifies for R-PACER
17 financing and for an R-PACER lien.

18 (9) "Qualified improvement" means a permanent improvement affixed
19 to real property and intended to: (a) Decrease energy consumption or
20 demand through the use of efficiency technologies, products, or
21 activities that reduce or support the reduction of energy
22 consumption, allow for the reduction in demand, or support the
23 production of clean, renewable energy, including but not limited to a
24 product, device, or interacting group of products or devices on the
25 customer's side of the meter that generates electricity, provides
26 thermal energy, or regulates temperature; (b) decrease greenhouse gas
27 emissions; (c) decrease water consumption or demand and address safe
28 drinking water through the use of efficiency technologies, products,
29 or activities that reduce or support the reduction of water
30 consumption, allow for the reduction in demand, or reduce or
31 eliminate lead from water which may be used for drinking or cooking;
32 or (d) increase resilience, including but not limited to seismic
33 retrofits, fire detection or fire suppression, flood mitigation,
34 stormwater management, wildfire and wind resistance, energy storage,
35 and microgrids.

36 (10) "Qualified project" means a project approved by the program
37 administrator, involving the installation or modification of a
38 qualified improvement, including new construction or the adaptive
39 reuse of eligible property with a qualified improvement.

1 (11) "Region" means a geographical area as determined by a county
2 pursuant to section 4 of this act.

3 (12) "R-PACER financing" means an investment from a capital
4 provider to a property owner to finance or refinance a qualified
5 project as described under this chapter.

6 (13) "R-PACER lien" means the lien recorded at the county on the
7 eligible property to secure the voluntary annual assessment, which
8 remains on the property until paid in full.

9 NEW SECTION. **Sec. 3.** (1)(a) The department of commerce may
10 establish a voluntary statewide R-PACER program that counties may
11 choose to participate in. A county may establish a separate voluntary
12 countywide R-PACER program, provided that it conforms to the
13 requirements of this chapter.

14 (b) An R-PACER program shall be managed efficiently and
15 transparently, including by:

16 (i) Making any services that the program may choose to offer to
17 property owners, such as estimating energy savings, overseeing
18 project development, or evaluating alternative equipment
19 installations, priced separately and open to purchase by the property
20 owner from qualified third-party providers;

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

24 (iii) Allowing financial underwriting and evaluation to be
25 performed by capital providers; and

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

29 (2) The program shall establish uniform criteria for which
30 projects qualify due to their public benefit for participation in R-
31 PACER programs including, but not limited to, criteria for measuring
32 or determining if investments in energy will:

33 (a) Reduce greenhouse gas emissions;

34 (b) Be effective for reducing energy demand or replacing
35 nonrenewable energy with renewable energy;

36 (c) Be appropriate to meet seismic risks for each region of the
37 state and type of structure;

38 (d) Reduce stormwater or pollution to be significant public
39 benefit; or

1 (e) Reduce the risk of wildfire, flooding, or other natural or
2 human-caused disaster, including how to determine if the public
3 benefit in reduced public risk and emergency response qualifies for
4 inclusion in R-PACER programs.

5 (3) The program must prepare a program guidebook that must
6 include at minimum:

7 (a) A sample form bilateral or triparty agreement or agreements,
8 as appropriate, between a county, the property owner, and the capital
9 provider which details:

10 (i) The agreement between the county and the property owner to
11 have an assessment placed on the qualified property as repayment for
12 R-PACER financing;

13 (ii) An agreement by the county to place a lien on the property
14 to secure the obligation to repay;

15 (iii) The obligation of the property owner to repay the R-PACER
16 financing to the capital provider; and

17 (iv) An assignment of the R-PACER lien by the county to the
18 capital provider;

19 (b) A statement that the period of the financing agreement will
20 not exceed the useful life of the qualified project, or weighted
21 average life if more than one qualified improvement is included in
22 the qualified project, that is the basis for the financing agreement;

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

25 (d) A statement explaining the lender consent requirement
26 provided in section 8 of this act;

27 (e) A statement explaining the review requirement provided by
28 section 4 of this act;

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

31 (g) A statement specifying that the county has no liability as a
32 result of the agreement.

33 (4) A program guidebook need not be completed and adopted prior
34 to accepting and approving applications by a program, so long as the
35 program complies with the provisions of this chapter.

36 (5) The program administrator must make the program guidebook
37 available for public inspection on the county or department of
38 commerce's website.

39 (6) A county or the department of commerce may contract out the
40 responsibilities of program administration, including the

1 responsibilities of this section, to a public, quasi-public, or
2 private third-party entity.

3 (7) Any county program guidebook established prior to a statewide
4 program may subsequently include or incorporate by reference any
5 aspect of a statewide program guidebook; however, upon development of
6 a statewide program guidebook with a form agreement or agreements
7 developed pursuant to subsection (3)(a) of this section, the form
8 agreement or agreements shall be required to be used by all county
9 programs from the time that the first R-PACER lien is recorded under
10 the statewide program, or the department of commerce may incorporate
11 by reference any portion of any county program guidebook, including a
12 form agreement or agreements, as its program guidebook.

13 (8) The department of commerce may provide grants to counties to
14 assist in the design and implementation of R-PACER programs under
15 this chapter.

16 NEW SECTION. **Sec. 4.** (1) A program must establish an R-PACER
17 application and review process to review and evaluate project
18 applications for R-PACER financing, and prescribe the form and manner
19 of the application. At a minimum, an applicant must demonstrate:

20 (a) That the project provides a benefit to the public, in the
21 form of energy or water resource conservation, reduced public health
22 risk, or reduced public emergency response risk;

23 (b) For an existing building:

24 (i) Where energy or water usage improvements are
25 proposed, certification by a licensed professional engineer,
26 registered architect, or other professional listed in the program
27 guidebook, stating that the proposed qualified improvements will
28 either result in more efficient use or conservation of energy or
29 water, the reduction of greenhouse gas emissions, or the addition of
30 renewable sources of energy or water; or

31 (ii) Where resilience improvements are proposed, certification by
32 a licensed professional engineer, registered architect, or other
33 professional listed in the program guidebook, stating that the
34 qualified improvements will result in improved resilience;

35 (c) For new construction, certification by a licensed
36 professional engineer or registered architect stating that the
37 proposed qualified improvements will enable the project to exceed the
38 energy efficiency or water efficiency or renewable energy or

1 renewable water or resilience requirements of the current building
2 code.

3 (2) The program may charge an application fee to cover the costs
4 of establishing and conducting the application review process.

5 (3) Upon the denial of an application, the program administrator
6 must provide an opportunity for an adjudicative proceeding subject to
7 the applicable provisions of chapter 34.05 RCW.

8 (4) After an approved project is completed, an applicant must
9 provide the program written verification, as defined in the program
10 guidebook, stating that the qualified project was properly completed
11 and is operating as intended.

12 (5) No later than one year after the governing body of a county
13 establishes a program under this chapter, it must begin accepting
14 applications and approving applications.

15 (6) The department of commerce may adopt rules to implement the
16 voluntary statewide program.

17 NEW SECTION. **Sec. 5.** (1) To adopt a program under this chapter,
18 the governing body of a county must take the following actions:

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

20 (i) A statement that financing qualified projects, repaid by
21 voluntary assessments on property benefited by R-PACER improvements,
22 is in the public interest for safety, health, and other common good
23 reasons;

24 (ii) A description of the region in which the program is offered,
25 which:

26 (A) May include the entire county, which may include both
27 unincorporated and incorporated territory; and

28 (B) Must be located wholly within the county's jurisdiction; and

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

31 (b) Hold a public hearing at which the public may comment on the
32 proposed program.

33 (2) A county may designate more than one region. If multiple
34 regions are designated, the regions may be separate, overlapping, or
35 coterminous.

36 (3) The resolution or ordinance adopted by a county under this
37 section may incorporate the department of commerce program guidebook
38 or any amended versions of that program guidebook, as appropriate, by
39 reference.

1 (4) A county adopting an R-PACER program pursuant to this chapter
2 may narrow the definition of "qualified improvements" to be
3 consistent with the county's climate goals.

4 (5) Any combination of counties may agree to jointly implement a
5 program under this chapter. If two or more counties implement a
6 program jointly, a single public hearing held jointly by the
7 cooperating counties is sufficient to satisfy the requirements of
8 this chapter.

9 (6) If a county elects to join the statewide program administered
10 by the department of commerce, it may adopt a resolution or ordinance
11 in accordance with the requirements of the department.

12 (7) In lieu of establishing a voluntary statewide program, the
13 department of commerce may produce a program guidebook for reference
14 and use by county programs.

15 NEW SECTION. **Sec. 6.** (1) A county shall record each R-PACER
16 lien in the real property records of the county in which the property
17 is located. The lien and release shall be prepared in conformity with
18 chapter 65.04 RCW.

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

21 (a) The legal description of the eligible property;

22 (b) The assessor's parcel number of the property;

23 (c) The grantor's name, which must be the same as the property
24 owner on the assessment agreement;

25 (d) The grantee's name, which must be the county in which the
26 property is located;

27 (e) The date on which the lien was created;

28 (f) The principal amount of the lien;

29 (g) The terms and length of the lien; and

30 (h) A copy of the voluntary assessment agreement between the
31 county and the property owner.

32 (3) The county shall also record the assignment of the R-PACER
33 lien from the county to the appropriate capital provider.

34 (4) The lien holder or assignee will record a release upon
35 discharge of the lien. The lien holder may also record a partial
36 release.

1 NEW SECTION. **Sec. 7.** (1) The R-PACER lien amount plus any
2 interest, penalties, and charges accrued or accruing on the R-PACER
3 lien:

4 (a) Takes precedence over all other liens or encumbrances except
5 a lien for taxes imposed by the state, a local government, or a
6 junior taxing district on real property, which liens for taxes shall
7 have priority over such benefit R-PACER lien, provided existing
8 mortgage holders, if any, have provided written consent described in
9 section 8 of this act; and

10 (b) Is a first and prior lien, second only to a lien for taxes
11 imposed by the state, a local government, or a junior taxing district
12 against the real property on which a R-PACER lien is imposed, from
13 the date on which the notice of the R-PACER lien is recorded until
14 the R-PACER lien, interest, penalties, and charges accrued or
15 accruing are paid.

16 (2) The R-PACER lien runs with the land, and that portion of the
17 R-PACER lien that has not yet become due is not accelerated or
18 eliminated by foreclosure of the R-PACER lien or any lien for taxes
19 imposed by the state, a local government, or junior taxing district
20 against the real property on which the R-PACER lien is imposed.

21 (3) Delinquent installments due on an R-PACER lien incur interest
22 and penalties as specified in the financing agreement.

23 (4) After the R-PACER lien is recorded as provided in this
24 section, the voluntary assessment and the R-PACER lien may not be
25 contested on the basis that the improvement is not a qualified
26 improvement or that the project is not a qualified project.

27 (5) Collection and enforcement of delinquent R-PACER liens or R-
28 PACER assessment installments, including through foreclosure as set
29 forth in subsection (6) of this section, are the responsibility of
30 the capital provider.

31 (6) (a) The R-PACER lien shall be enforced by the capital provider
32 at any time after one year from the date of delinquency in the same
33 manner that the collection of delinquent real property taxes is
34 enforced by the county and county treasurer under chapter 84.64 RCW,
35 including the provisions of RCW 84.64.040, excepting that:

36 (i) A sworn declaration by the capital provider or assignee
37 attesting to the assessment delinquency of at least one year shall be
38 used in lieu of the certificate required under RCW 84.64.050; and

39 (ii) Any action or obligation under RCW 84.64.080, including the
40 issuance of a tax deed, that cannot be undertaken by the capital

1 provider or assignee shall be performed by the county or county
2 treasurer. These duties facilitate the enforcement of the R-PACER
3 lien by the capital provider or assignee, as applicable, and shall
4 not constitute prohibited enforcement activities under section 13 of
5 this act.

6 (b) Any amounts received by the county or county treasurer
7 related to delinquent installments due on an R-PACER lien, whether by
8 sale or redemption, shall be remitted to the capital provider or
9 assignee, as applicable.

10 (c) All costs that may be incurred by the county or county
11 treasurer from activities taken pursuant to this section shall be
12 reimbursed by the capital provider or assignee, as applicable, to the
13 county or county treasurer.

14 (7) The capital provider may sell or assign, for consideration,
15 any and all liens received from the participating county. The capital
16 provider or their assignee shall have and possess the same powers and
17 rights at law or in equity to enforce the R-PACER lien in the same
18 manner as described in subsection (6) of this section.

19 NEW SECTION. **Sec. 8.** (1) Before a capital provider may enter
20 into a financing agreement to provide R-PACER financing of a
21 qualified project to a record owner of any eligible property, the
22 capital provider 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 and that the R-PACER lien
25 will take precedence over all other liens except for a lien for taxes
26 as described in section 7 of this act.

27 (2) Before a capital provider may enter into a financing
28 agreement to provide R-PACER financing of a qualified project to the
29 record owner of any multifamily residential real property with five
30 or more dwelling units, the program administrator must also receive
31 written consent from any and all holders of affordable housing
32 covenants, restrictions, or regulatory agreements in the real
33 property that the property may participate in the program and that
34 the R-PACER lien will take precedence over all other liens except for
35 a lien for taxes as described in section 7 of this act.

36 NEW SECTION. **Sec. 9.** The R-PACER financing through a program
37 established under this chapter may include:

- 1 (1) The cost of materials and labor necessary for installation or
2 modification of a qualified improvement;
- 3 (2) Permit fees;
- 4 (3) Inspection fees;
- 5 (4) Lender's fees;
- 6 (5) Program application and administrative fees;
- 7 (6) Project development and engineering fees;
- 8 (7) Third-party review fees, including verification review fees;
- 9 (8) Capitalized interest;
- 10 (9) Interest reserves;
- 11 (10) Escrow for prepaid property taxes and insurance; or
- 12 (11) Any other fees or costs that may be incurred by the property
13 owner incident to the installation, modification, or improvement on a
14 specific or pro rata basis.

15 NEW SECTION. **Sec. 10.** The proposed R-PACER financing for a
16 qualified project may authorize the property owner to:

- 17 (1) Purchase directly the related equipment and materials for the
18 installation or modification of a qualified improvement; and
- 19 (2) Contract directly, including through lease, power purchase
20 agreement, or other service contract, for the installation or
21 modification of a qualified improvement.

22 NEW SECTION. **Sec. 11.** A county that adopts a program and
23 designates a program region under this chapter may not:

- 24 (1) Make the issuance of a permit, license, or other
25 authorization from the county to a person who owns property in the
26 region contingent on the person entering into a written contract to
27 repay the financing of a qualified project under this chapter; or
- 28 (2) Otherwise compel a person who owns property in the region to
29 enter into a written contract to repay the financing of a qualified
30 project under this chapter.

31 NEW SECTION. **Sec. 12.** The members of the governing body of a
32 county, employees of a county, and board members, executives, and
33 employees under this chapter are not personally liable as a result of
34 exercising any rights or responsibilities granted under this chapter.

35 NEW SECTION. **Sec. 13.** A county may not enforce any privately
36 financed debt under this chapter. Neither the state nor any county

1 may use public funds to fund or repay any loan between a capital
2 provider and property owner. No section under this chapter shall be
3 interpreted to pledge, offer, or encumber the full faith and credit
4 of a local government, nor shall any local government pledge, offer,
5 or encumber its full faith and credit for any lien amount through a
6 program.

7 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
8 constitute a new chapter in Title 36 RCW.

--- END ---