
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2405

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

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 are

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

12 (3) The legislature declares that the establishment and operation
13 of a C-PACER program under this chapter serves important public
14 health and safety interests. A qualified improvement as defined in
15 section 2 of this act provides benefit to the public, either in the
16 form of energy or water resource conservation, reduced public health
17 risk, or reduced public emergency response risk. Accordingly, the
18 governing body of a county is authorized to determine that it is
19 convenient and advantageous to adopt a program under this chapter.

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

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

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

29 (3) "C-PACER financing" means an investment from a capital
30 provider to a property owner to finance or refinance a qualified
31 project as described under this chapter.

32 (4) "C-PACER lien" means the lien recorded at the county on the
33 eligible property to secure the voluntary annual assessment, which
34 remains on the property until paid in full.

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

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

7 (7) "Program" means a C-PACER program established under this
8 chapter.

9 (8) "Program administrator" means the party designated by a
10 county or the department of commerce to administer a C-PACER program.
11 This may be the department of commerce, the county itself, or a third
12 party, provided that the administration procedures used conform to
13 the requirements of this chapter.

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

19 (10) "Project application" means an application submitted to a
20 program to demonstrate that a proposed project qualifies for C-PACER
21 financing and for a C-PACER lien.

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

39 (12) "Qualified project" means a project approved by the program
40 administrator, involving the installation or modification of a

1 qualified improvement, including new construction or the adaptive
2 reuse of eligible property with a qualified improvement.

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

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

10 (b) A C-PACER program shall be managed efficiently and
11 transparently, including by:

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

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

20 (iii) Allowing financial underwriting and evaluation to be
21 performed by capital providers; and

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

25 (2) The program shall establish uniform criteria for which
26 projects qualify due to their public benefit for participation in C-
27 PACER programs including, but not limited to, criteria for measuring
28 or determining if investments in energy will reduce greenhouse gas
29 emissions; be effective for reducing energy demand or replacing
30 nonrenewable energy with renewable energy; will be appropriate to
31 meet seismic risks for each region of the state and type of
32 structure; will reduce stormwater or pollution to be significant
33 public benefit; or will reduce the risk of wildfire, flooding, or
34 other natural or human-caused disaster, including how to determine if
35 the public benefit in reduced public risk and emergency response
36 qualifies for inclusion in C-PACER programs.

37 (3) The program must prepare a program guidebook that must
38 include at minimum:

1 (a) A sample form bilateral or triparty agreement or agreements,
2 as appropriate, between a county, the property owner, and the capital
3 provider which details the agreement between the county and the
4 property owner to have an assessment placed on the qualified property
5 as repayment for C-PACER financing; an agreement by the county to
6 place a lien on the property to secure the obligation to repay; the
7 obligation of the property owner to repay the C-PACER financing to
8 the capital provider; and an assignment of the C-PACER lien by the
9 county to the capital provider;

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

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

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

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

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

22 (g) A statement specifying that the county has no liability as a
23 result of the agreement; and

24 (h) A program guidebook need not be completed and adopted prior
25 to accepting and approving applications by a program, so long as the
26 program complies with the provisions of this chapter.

27 (4) The program administrator must make the program guidebook
28 available for public inspection on the county's or department of
29 commerce's web site.

30 (5) A county or the department of commerce may contract out the
31 responsibilities of program administration, including the
32 responsibilities of this section, to a public, quasi-public, or
33 private third-party entity.

34 (6) Any county program guidebook established prior to a statewide
35 program may subsequently include or incorporate by reference any
36 aspect of a statewide program guidebook; however, upon development of
37 a statewide program guidebook with a form agreement or agreements
38 developed pursuant to subsection (3)(a) of this section, the form
39 agreement or agreements shall be required to be used by all county
40 programs from the time that the first C-PACER lien is recorded under

1 the statewide program, or the department of commerce may incorporate
2 by reference any portion of any county program guidebooks, including
3 a form agreement or agreements, as its program guidebook.

4 (7) The department of commerce may provide grants to counties to
5 assist in the design and implementation of C-PACER programs under
6 this chapter.

7 NEW SECTION. **Sec. 4.** (1) A program must establish a C-PACER
8 application and review process to review and evaluate project
9 applications for C-PACER financing, and prescribe the form and manner
10 of the application. At a minimum, an applicant must demonstrate:

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

14 (b) For an existing building: (i) Where energy or water usage
15 improvements are proposed, certification by a licensed professional
16 engineer, or other professional listed in the program guidebook,
17 stating that the proposed qualified improvements will either result
18 in more efficient use or conservation of energy or water, the
19 reduction of greenhouse gas emissions, or the addition of renewable
20 sources of energy or water, or (ii) where resilience improvements are
21 proposed, certification by a licensed professional engineer stating
22 that the qualified improvements will result in improved resilience;

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

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

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

33 (4) After an approved project is completed, an applicant must
34 provide the program written verification, as defined in the program
35 guidebook, stating that the qualified project was properly completed
36 and is operating as intended.

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

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

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

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

6 (i) A statement that financing qualified projects, repaid by
7 voluntary assessments on property benefited by C-PACER improvements,
8 is in the public interest for safety, health, and other common good
9 reasons;

10 (ii) A description of the region in which the program is offered,
11 which:

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

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

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

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

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

22 (3) The resolution or ordinance adopted by a county under this
23 section may incorporate the department of commerce program guidebook
24 or any amended versions of that program guidebook, as appropriate, by
25 reference.

26 (4) A county adopting a C-PACER program pursuant to this chapter
27 may narrow the definition of "qualified improvements" to be
28 consistent with the county's climate goals.

29 (5) Any combination of counties may agree to jointly implement a
30 program under this chapter. If two or more counties implement a
31 program jointly, a single public hearing held jointly by the
32 cooperating counties is sufficient to satisfy the requirements of
33 this chapter.

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

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

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

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

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

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

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

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

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

14 (f) The principal amount of the lien;

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

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

18 (3) The county shall also record the assignment of the C-PACER
19 lien from the county to the appropriate capital provider.

20 (4) The lien holder or assignee will record a release upon
21 discharge of the lien. The lien holder may also record a partial
22 release.

23 NEW SECTION. **Sec. 7.** (1) The C-PACER lien amount plus any
24 interest, penalties, and charges accrued or accruing on the C-PACER
25 lien:

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

32 (b) Is a first and prior lien, second only to a lien for taxes
33 imposed by the state, a local government, or a junior taxing district
34 against the real property on which the C-PACER lien is imposed, from
35 the date on which the notice of the C-PACER lien is recorded until
36 the C-PACER lien, interest, penalties, and charges accrued or
37 accruing are paid.

38 (2) The C-PACER lien runs with the land, and that portion of the
39 C-PACER lien that has not yet become due is not accelerated or

1 eliminated by foreclosure of the C-PACER lien or any lien for taxes
2 imposed by the state, a local government, or junior taxing district
3 against the real property on which the C-PACER lien is imposed.

4 (3) Delinquent installments due on a C-PACER lien incur interest
5 and penalties as specified in the financing agreement.

6 (4) After the C-PACER lien is recorded as provided in this
7 section, the voluntary assessment and the C-PACER lien may not be
8 contested on the basis that the improvement is not a qualified
9 improvement or that the project is not a qualified project.

10 (5) Collection and enforcement of delinquent C-PACER liens or C-
11 PACER financing installment payments, including foreclosure, shall
12 remain the responsibility of the capital provider.

13 (6) The C-PACER lien shall be enforced by the capital provider at
14 any time after one year from the date of delinquency in the same
15 manner that the collection of delinquent real property taxes is
16 enforced by the county under chapter 84.64 RCW, including the
17 provisions of RCW 84.64.040, excepting that a sworn declaration by
18 the capital provider or assignee attesting to the assessment
19 delinquency of at least one year shall be used in lieu of the
20 certificate required under RCW 84.64.050.

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

26 NEW SECTION. **Sec. 8.** (1) Before a capital provider may enter
27 into a financing agreement to provide C-PACER financing of a
28 qualified project to a record owner of any eligible property, the
29 capital provider must receive written consent from any holder of a
30 lien, mortgage, or security interest in the real property that the
31 property may participate in the program and that the C-PACER lien
32 will take precedence over all other liens except for a lien for taxes
33 as described in section 7 of this act.

34 (2) Before a capital provider may enter into a financing
35 agreement to provide C-PACER financing of a qualified project to the
36 record owner of any multifamily residential real property with five
37 or more dwelling units, the program administrator must also receive
38 written consent from any and all holders of affordable housing
39 covenants, restrictions, or regulatory agreements in the real

1 property that the property may participate in the program and that
2 the C-PACER lien will take precedence over all other liens except for
3 a lien for taxes as described in section 7 of this act.

4 NEW SECTION. **Sec. 9.** The C-PACER financing through a program
5 established under this chapter may include:

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

20 NEW SECTION. **Sec. 10.** The proposed C-PACER financing for a
21 qualified project may authorize the property owner to:

- 22 (1) Purchase directly the related equipment and materials for the
23 installation or modification of a qualified improvement; and
- 24 (2) Contract directly, including through lease, power purchase
25 agreement, or other service contract, for the installation or
26 modification of a qualified improvement.

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

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

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

5 NEW SECTION. **Sec. 13.** A county may not enforce any privately
6 financed debt under this chapter. Neither the state nor any county
7 may use public funds to fund or repay any loan between a capital
8 provider and property owner. No section under this chapter shall be
9 interpreted to pledge, offer, or encumber the full faith and credit
10 of a local government, nor shall any local government pledge, offer,
11 or encumber its full faith and credit for any lien amount through a
12 program.

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

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