Washington Adopts "PACER" Legislation That Will Create a Proven Source of Financing for Energy and Resiliency Retrofits in Commercial Buildings

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On March 18, 2020, Governor Jay Inslee signed HB 2405, legislation that for the first time authorizes Property Assessed Clean Energy (PACE) loans in the State of Washington. The PACE program has been used successfully in many other states to finance energy efficiency and renewable energy retrofits on existing buildings, as well as projects in new buildings. Washington's version of the program also permits financing for resiliency retrofits, such as retrofits for seismic safety, and is therefore referred to as "PACER," for "Property Assessed Clean Energy and Resiliency." The new Washington program should create reliable access to private financing that will allow commercial building owners to fund deep energy and water efficiency measures and renewable energy systems, as well as retrofitting buildings that are vulnerable to earthquake damage, a problem that dogged Washington policy makers for decades.

How PACER Works

PACER financing takes advantage of two fundamental insights: (1) a property owner with a more energy-efficient building will have lower energy bills, and therefore a greater capacity to repay debt, than the owner of an equivalent building lacking efficiency measures; and, (2) energy efficiency retrofits create benefits that are embedded in a particular building, and the owner of the building should pay for those benefits even if ownership changes during the period when a PACER loan is being repaid. Similarly, resiliency retrofits provide long-term benefits to a building owner in the form of reduced insurance costs, benefits that likewise run with the improved property.

Accordingly, PACER loans run with the property, and responsibility for repaying any outstanding balance on a PACER loan becomes the obligation of the new building owner if the building is sold before the PACER loan is paid off. This result is achieved by recording the PACER loan as a lien on the property title, which transfers along with the title upon sale of the property. Thus, PACER loans become an obligation associated with the property that benefits from the loan rather than the personal debt of a particular property owner. This structure permits a long and predictable payment stream, so that private financiers can finance projects with a long payback periods at relatively low interest rates. A good summary of PACER financing is available here.

Washington will be the 37th state to adopt PACER legislation, and will join 20 states that already have PACER programs up and running. To date, those programs have leveraged more than $1.1 billion in financing for energy efficiency, renewable energy, and resiliency projects.

Washington PACER Legislation

Washington modeled its PACER legislation on successful programs from other states, particularly those states, such as Texas, that have relied on private rather than public financing. The Washington legislation authorizes PACER loans for privately-owned commercial, industrial, agricultural, or multi-family (with five or more dwelling units) properties. The program is to be administered on a state-wide basis by the Washington Department of Commerce and Washington counties are also authorized to adopt the program, either singularly or in cooperation with other counties. The legislation authorizes PACER financing that will fund energy and water efficiency improvements, renewable energy systems, and seismic upgrades. PACER financing is available both for existing commercial buildings and for new construction.

PACER loans are to be repaid from property-based assessments that are recorded as a lien on the affected property in the county property records, with the obligation to pay the assessments transferred to each new owner of the affected property. PACER debt will be superior to all other debt obligations other than unpaid taxes. PACER debt can be used to pay for the equipment and labor necessary to install upgrades and related costs such as engineering, permitting costs, lender's fees, inspection fees, reserves, and program administration fees.

These features of the Washington PACER program should permit commercial building owners to obtain financing for energy- and resiliency-related projects on very reasonable terms. The new legislation is well-timed, given the substantial obligations imposed on commercial building owners during the last year's session of the Washington legislature, which enacted legislation requiring building owners to substantially reduce greenhouse gas emissions and to abide by new energy efficiency requirements.

Financing Transformation Energy Legislation

In the last two years, Washington has adopted ambitious legislation requiring a fundamental shift in the state's energy economy. By creating a new mechanism that facilitates private financing for commercial building owners, HB 1257, along with other innovative programs such as Seattle's "Energy As A Service" financing model, allows commercial building owners to finance the upgrades needed to meet these mandates, as well as to meet the aggressive sustainability policies many Washington businesses have adopted in recent years.

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