

MEMORANDUM

March 27, 2015

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Action:** Bill 6-15, Commercial Property Assessed Clean Energy Program – Established

Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): enact Bill 6-15 with an amendment to conform to state law.
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Bill 6-15, Commercial Property Assessed Clean Energy Program - Established, sponsored by the Council President at the request of the County Executive, was introduced on February 3, 2015. A public hearing was held on March 3 at which representatives from the County Executive and the Apartment and Office Building Association (AOBA) supported the bill. A Transportation, Infrastructure, Energy and Environment Committee worksession was held on March 18.

Bill 6-15 would:

- establish a Commercial Property Assessed Clean Energy Program to assist qualifying commercial property owners to make energy improvements;
- allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a real property tax bill;
- establish that the surcharge on a real property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and
- generally amend the environmental sustainability law.

Background

As Committee members may recall, in 2013 the Council enacted (and the Executive later signed) Bill 11-13, which required the Executive to prepare a plan for implementing a Commercial Property Assessed Clean Energy Program (PACE). The Executive delivered the Plan to the Council on May 19, 2014. Bill 6-15 would implement that Plan.

Issue/Committee Recommendation

Owner's ability to repay. Subtitle 11 of the Local Government Article of the Maryland Code authorizes a county or municipality to establish a clean energy loan program. Section 1-1104 of that law requires that one of the eligibility requirements for participation in this program be that the county must "give due regard for the property owner's ability to repay a loan provided under the program." This requirement is not in Bill 6-15 as introduced. **Committee recommendation (3-0):** amend Bill 6-15 to include this requirement (©7, lines 145-149 and ©8, lines 176-178).

Outstanding Issue for Council Discussion

Loan to value ratio. Bill 6-15 would limit the loan amount under the PACE program to no more than 20% of the cash value of the property and be no more than 90% of the full cash value of the property (together with the outstanding mortgage balance) (©7-8, lines 159-165). Bracken Hendricks, on behalf of Urban Ingenuity, which is the private administrator of the District of Columbia PACE program, urged the Council to set a higher loan to value threshold for properties that have little or no debt. Mr. Hendricks noted that for these properties, the effective cap on these properties is 20% instead of 90%. Mr. Hendricks suggested that this would be especially beneficial for non-profits and other "community-based institutions" that have more limited access to traditional capital markets (©27-29). In response, the Department of Finance consulted with its consultant who developed the County's proposed PACE program. The consultant noted that 20% is generally the upper limit of PACE programs. Both the consultant and the Department raise concerns that raising the limit too high raises the possibility of default. The Department of Finance strongly recommended retaining the 20% limit (©30-32). Council staff notes that while many programs limit the loan to value ratio to 20%, at least one jurisdictions has a higher limit. Connecticut's PACE program guidelines provide for a 35% loan to value ratio (though that cap can be exceeded under certain conditions), but has a cap of 80% total debt.

The Committee did not make a recommendation on this issue, but preferred to discuss it at this session.

This packet contains:	<u>Circle #</u>
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Bill No. 6-15
Concerning: Commercial Property
Assessed Clean Energy Program -
Established
Revised: 3/27/2015 Draft No. 2
Introduced: February 3, 2015
Expires: August 3, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) establish a Commercial Property Assessed Clean Energy Program to assist qualifying commercial property owners to make energy improvements;
- (2) allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a real property tax bill;
- (3) establish that the surcharge on a real property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and
- (4) generally amend the environmental sustainability law.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-33, 18A-34, 18A-35, 18A-36, and 18A-37

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 18A-33, 18A-34, 18A-35, 18A-36, and 18A-37 are amended**
 2 **as follows:**

3 **Article 5. Commercial Property Assessed Clean Energy Program**

4 **18A-33. [Commercial Property Assessed Clean Energy Program] Definitions.**

5 (a) *Definitions.* In this Section, the following words have the meanings
 6 indicated:

7 Commercial property means any real property located in the County that
 8 is either not designed for or intended for human habitation, or that is used
 9 for human habitation as a multi-family dwelling of 4 or more rental units.

10 Commercial Property Assessed Clean Energy Program or Program
 11 means a program that facilitates energy improvements and requires
 12 repayment through a surcharge on the owner's property tax bill.

13 County designated lender means a person who may be selected by the
 14 County through a competitive process to offer financing, and if offered
 15 and accepted by the County, related funding for administrative services
 16 for the Program.

17 County designated program manager means a person who may be
 18 selected by the County through a competitive process to provide
 19 administrative and management services for the Program.

20 Department means the Department of Finance.

21 Director means the Director of the Department or the Director's
 22 designee.

23 Energy efficiency and/or renewable energy improvement or improvement
 24 means any equipment, device, or material that is intended to decrease
 25 energy consumption or expand use of renewable energy sources,
 26 including:

27 (1) insulation in any wall, roof, floor, foundation, or heating and

28 cooling distribution system;

29 (2) a storm window or door, multi-glazed window or door, heat-
30 absorbing or heat-reflective glazed and coated window and door
31 system, or additional glazing, reduction in glass area, and other
32 window and door system modification that reduces energy
33 consumption;

34 (3) an automated energy control system;

35 (4) a heating, ventilating, or air-conditioning and distribution system
36 modification or replacement;

37 (5) caulking, weather-stripping, and air sealing;

38 (6) replacement or modification of a lighting fixture to reduce the
39 energy use of the lighting system;

40 (7) an energy recovery system;

41 (8) a day lighting system;

42 (9) the installation or upgrade of electrical wiring or outlets to charge
43 a motor vehicle that is fully or partially powered by electricity;

44 (10) a measure that reduces the usage of water or increases the
45 efficiency of water usage;

46 (11) any other installation or modification of equipment, device, or
47 other material intended to decrease energy consumption or expand
48 the use of a renewable energy source;

49 (12) any measure or system that makes use of or expands a renewable
50 source of energy, including solar water heater, solar thermal
51 electric, photovoltaic's, wind, biomass, hydroelectric, geothermal
52 electric, geothermal heat pumps, anaerobic digestion, tidal energy,
53 wave energy, ocean thermal, fuel cells using renewable fuels, and
54 geothermal direct-use; or

(13) any renewable energy system that is a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the electricity meter that uses at least one renewable energy source to generate electricity. A renewable energy system includes a biomass system, but does not include an incinerator or digester.

Private lender means a lender selected by the property owner to provide loan funds to the property owner for an improvement.

Property owner means a person who owns qualified property or has a ground lease or a long-term lease of 8 or more years on qualified property.

Qualified property means any commercial real property that meets the eligibility criteria for the Program.

Renewable energy source means a source of energy that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power.

Renewable energy source does not include petroleum, nuclear, natural gas, or coal. A renewable energy source comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes:

- (1) non-hazardous, organic biomass material;
- (2) solar electric and solar thermal energy;
- (3) wind energy;
- (4) geothermal energy; and
- (5) methane gas captured from a landfill.

Surcharge means the annual repayment of a loan, including principal, interest, and related charges, that funds an improvement and is collected through the real property tax billing process.

82 [(b) The Executive must, by May 19, 2014, prepare a plan for implementing
83 a Commercial Property Assessed Clean Energy Program that analyzes
84 and provides recommendations on the following elements:

- 85 (1) standards for eligible energy and environmental improvements;
- 86 (2) energy audit or project design review requirements;
- 87 (3) procedures for monitoring project progress and post-installation
88 inspections;
- 89 (4) program funding sources;
- 90 (5) lending standards and priorities;
- 91 (6) minimum and maximum loan amounts;
- 92 (7) interest rates, terms, and conditions;
- 93 (8) application procedures, including necessary supporting
94 documentation;
- 95 (9) criteria for adequate security;
- 96 (10) procedures to refer applicants to other public and private sources
97 of funds and incentives;
- 98 (11) procedures related to decisions on loan acceptance and denial, or
99 loan terms and conditions;
- 100 (12) procedures for nonpayment or default;
- 101 (13) disclosure requirements for real estate transactions;
- 102 (14) criteria for loan disbursement; and
- 103 (15) any additional requirements necessary for program operation or
104 security of loan funds identified by the Executive.]

105 [[18A-34 – 18A-37. Reserved.]]

106 **18A-34. Commercial Property Assessed Clean Energy Program established.**

107 (a) Established. The Director must create and administer a Commercial
108 Property Assessed Clean Energy Program.

(b) Third-party lender. The Director may enter into an agreement with a third-party lender that is either a County designated lender or a private lender that funds a loan for an improvement. The agreement must provide for the repayment of the loan for the improvement and any cost of administering the Program through a surcharge on the qualified property. The loan may include the cost of materials and labor necessary for installation, any permit fee, any inspection fee, any application or administrative fee, any bank or lender fee, and any other fee that the property owner may incur for the installation of the improvement. The third-party lender must submit a request for collection of each surcharge amount to the County designated program manager or, if there is no County designated program manager, to the Department no later than April 1 of each year.

(c) County designated program manager. The Director may enter into an agreement with a County designated program manager. The County designated program manager must notify the Department of the amount of the surcharge for each account to be collected on the real property tax bill for that year's levy no later than May 1 of each year, and in a format approved by the Department. The County designated program manager will receive the collections from the County, reconcile the collected and billed surcharge for each account, and remit the surcharge amount to the County designated lender or private lender. The County designated program manager must report annually to the County on the participants in the Program by name, property address, property tax account number, amount of each surcharge billed, collected by the County, and remitted to the lender, description of project, any administrative fees, the amount of each loan, the amount of each loan balance, and the term of each loan.

This report must be submitted to the Department no later than February 15 of each year pertaining to activity in the prior calendar year.

- (d) The Director may enter into an agreement with one person who provides both County designated lender and County designated program manager services.

18A-35. Eligibility.

In order to be eligible for this Program, the following criteria must be met:

(a) Eligibility.

- (1) The property must be a qualified property.
- (2) Before any loan is approved under the Program, the County must give due regard to the property owner's ability to repay a loan in a manner substantially similar to that required for a mortgage loan under Sections 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the Maryland Code.
- (3) The property owner must submit the following to the private lender or the County designated lender at the time of application for funding:
 - (A) express written consent of any holder of an existing mortgage or deed of trust on a qualified property; and
 - (B) verification that there are no delinquent fees, taxes, water or sewer charges or other special assessments on the qualified property.
- ~~[[3]]~~ (4) The loan amount under this Program must:
 - (A) be at least \$5,000 and no more than 20% of the full cash value of the qualified property. The full cash value is determined by the Maryland State Department of Assessments and Taxation; and

(B) together with the outstanding balance of the mortgage or deed of trust, be no more than 90% of the full cash value of the qualified property.

(b) Property assessed clean energy surcharge.

(1) The property owner of qualified property must agree to repay the amount financed through a surcharge levied on the County's real property tax bill for the qualified property.

(2) A surcharge may be imposed under a written agreement between the County designated lender or private lender and the County.

(3) As a condition for entering into an agreement under the Program, the County designated lender or private lender must provide the County designated program manager and the Department a copy of the loan documents and documents that verify:

(A) the property owner's ability to repay the Property Assessed Clean Energy loan in a manner substantially similar to that required for a mortgage loan;

(B) there are no delinquent taxes, special assessments, or water or sewer charges on the qualified property;

[[B]] (C) there are no delinquent assessments on the qualified property under the Program;

[[C]] (D) the property owner has obtained all necessary permits;

[[D]] (E) the improvement is permanently affixed to the qualified property and complies with all applicable State and federal statutes and regulations, as determined by the appropriate regulatory authority;

[[E]] (F) existing mortgage or deed of trust lender consent;

[[F]] (G) loan to value documentation; and

190 ~~[[G]]~~ (H) any other financial or program document that the
 191 Director deems necessary.

192 (4) In addition to the administrative fees in Section 18A-34(c), the
 193 County may collect an administrative fee through the surcharge to
 194 cover charges relating to lending, program management, billing, or
 195 collection.

196 **18A-36. Payment of surcharge; lien.**

197 (a) The County must collect the amount financed through a surcharge on the
 198 property owner's real property tax bill and forward payments received by
 199 the County to the County designated program manager or, if there is no
 200 County designated program manager, to the lender no later than 30 days
 201 after the payment due dates for real property taxes. Payment due dates for
 202 semi-annual real property taxes are September 30 for the first installment
 203 and December 31 for the second installment, and for annual real property
 204 taxes the payment due date is September 30.

205 (b) If the property owner sells the qualified property, the buyer must continue
 206 to pay the surcharge levied on the annual property tax bill.

207 (c) The surcharge and any accrued interest or penalty constitutes a first lien
 208 on the real property to which the surcharge applies until paid. An unpaid
 209 surcharge will be, until paid, a lien on the qualified property on which it
 210 is imposed from the date it becomes payable. The surcharge will accrue
 211 interest and penalty and will be treated and collected like all other County
 212 property taxes. Any delinquency will be collected through the County
 213 Tax Sale process. The provisions of Title 14, Subtitle 8 of the Tax –
 214 Property Article of the Maryland Code that apply to a tax lien will also
 215 apply to the lien created under this law. Any delinquent surcharge
 216 collected through the County Tax Sale process must be forwarded to the

County designated program manager or, if there is no County designated program manager, to the lender no later than 30 days after the payment was received.

18A-37. Regulations; annual report.

(a) The Executive may adopt regulations under Method (2) to administer the Program.

(b) The Executive must submit an annual report to the County Council by March 15 of each year describing program participation, number and dollar value of surcharge billed and collected, and other relevant information pertaining to the prior calendar year.

Approved:

George Leventhal, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 6-15

Commercial Property Assessed Clean Energy Program - Established

DESCRIPTION: The requested legislation amends Article 5, Sections 33-37 of Chapter 18A of the Montgomery County Code. The amended sections establish a Commercial Property Assessed Clean Energy (PACE) Program to assist qualifying commercial property owners to make energy improvements; allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; establish that the surcharge on a property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and generally amend the environmental sustainability law. Current law, as adopted through Bill 11-13, requires that the County Executive submit a Commercial PACE Program Implementation Plan to the County Council on May 19, 2014. The County Executive submitted an Implementation Plan and is subsequently submitting legislation to establish the PACE program.

PROBLEM: Energy efficiency and renewable energy improvements, for example high-efficiency heating and air-conditioning systems, may be prohibitively costly to the property owner. PACE is designed to assist qualifying commercial properties with financing energy improvements. The PACE loan from a private lender is paid back through annual surcharges on the property tax bill. This loan stays with the property and a subsequent owner continues to pay the surcharge until the loan is fully paid. Moreover, having the PACE surcharge included on the tax bill provides greater security for the lender in the loan repayment as it allows the charge to be part of the tax bill and therefore part of the tax lien process if the PACE surcharge goes unpaid. PACE also addresses the problem of "split incentive" where an owner-financed improvement benefits the tenant through energy savings. Using the PACE repayment process, such improvement repayments are levied through the property tax bill that in many cases are paid by the tenant.

GOALS AND OBJECTIVES: To implement a Commercial PACE program that makes energy efficiency and renewable energy improvements more affordable and provides greater security to lenders in terms of collection of loan payments. Such energy improvements provide an environmental benefit to the borrower and the County.

COORDINATION: Department of Finance

FISCAL IMPACT: Office of Management and Budget

**ECONOMIC
IMPACT:** Department of Finance

EVALUATION: n/a

**EXPERIENCE
ELSEWHERE:** PACE programs have been introduced in various jurisdictions, including Washington DC, San Francisco, Connecticut and Florida. In some cases, the jurisdiction provides funding, such as in Washington DC, while in others, for example San Francisco CA, the program relies on private capital or owner-arranged financing.

**SOURCE OF
INFORMATION:** Robert Hagedoorn, Department of Finance (7-8887)

**APPLICATION
WITHIN
MUNICIPALITIES:** n/a

PENALTIES: n/a

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

January 14, 2015

TO: George Leventhal, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Legislation – Commercial Property Assessed Clean Energy Program

I am hereby submitting expedited legislation for your consideration and County Council action. The legislation amends the County Code to establish a Commercial Property Assessed Clean Energy (PACE) Program.

The PACE Program assists qualifying commercial property owners with making energy improvements; allows private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; and generally amends the environmental sustainability law.

Pursuant to current law, I submitted a Commercial PACE Program Implementation Plan to the County Council by May 19, 2014, and am subsequently submitting legislation to establish the PACE program. I look forward to working with the Council to implement this important environmental initiative.

cc: Timothy Firestine, Chief Administrative Officer
Marc Hansen, County Attorney
Joseph Beach, Director of Finance
Jennifer Hughes, Director, Office of Management and Budget
Bonnie Kirkland, Assistant Chief Administrative Officer

Attachments: Expedited Legislation; Legislative Request Report; Fiscal Impact Statement; Economic Impact Statement



ROCKVILLE, MARYLAND

MEMORANDUM

November 21, 2014

TO: Timothy L. Firestine, Chief Administrative Officer

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill XX-14, Commercial Property Assessed Clean Energy Program -
Established

Please find attached the fiscal impact statement for the above-referenced bill.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph Beach, Director, Department of Finance
Elyse Greenwald, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill XX-14, Commercial Property Assessed
Clean Energy Program - Established

1. Legislative Summary.

The proposed bill establishes a Commercial Property Assessed Clean Energy (PACE) program within the Department of Finance to assist qualified commercial property owners make energy improvements. The proposed legislation allows the County to enter into an agreement with a third party lender and collect loan repayments through the property tax bill.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The legislation will not result in a net change in revenues or expenditures to the County. The County intends to pass through all programmatic costs to program participants through fees charged with the loans made by private underwriters under contract with the County.

PACE programs in other jurisdictions have both initial startup costs and ongoing program operating costs. These costs are often funded by a surcharge on each loan. However, it will be necessary to carefully monitor these costs to ensure that the lending rates are competitive and support broad participation in the program from commercial property owners.

Montgomery County has already incurred an estimated \$100,000 in existing staff and consultant costs for the start up of this program including preparing the Program Guidelines and related legislation.

In addition to PACE program implementation costs, the Department of Environmental Protection (DEP) estimates a public outreach and media campaign for the PACE program would need to occur to both inform the public of the program and encourage participation. DEP estimates the initial public outreach budget related to PACE at \$25,000.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Please see number 2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

As stated in #2 above, the County intends to pass through the program administration costs to program participants. However, it will be necessary to monitor and carefully manage these costs to ensure that the lending rates are competitive and support broad participation in the

program from commercial property owners. Depending on the success of the PACE program, there may be a need for more outreach, support, and program resources.

6. An estimate of the staff time needed to implement the bill.

Assuming the County is successful in outsourcing both the lending and program administration function to a third-party, the Department of Finance will absorb the new Commercial PACE related responsibilities with existing staff.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

There will be no significant impact to existing staff in the Department of Finance or the Department Environmental Protection by adding this responsibility to existing portfolios.

8. An estimate of costs when an additional appropriation is needed.

See number 2 and 6 above.

9. A description of any variable that could affect revenue and cost estimates.

See number 2 and 6 above.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

See number 2 above. While some data are available on commercial PACE programs, sufficient long-term trend data are currently unavailable to accurately estimate revenues and expenditures of a fully functioning commercial PACE program. Program implementation expenditures should be re-examined regularly to ensure the program is fiscally and economically viable.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not Applicable.

12. Other fiscal impacts or comments.

Not Applicable.

13. The following contributed to and concurred with this analysis:

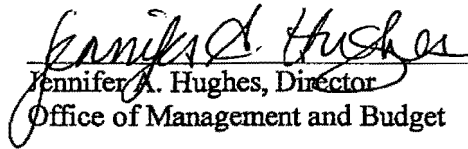
Stan Edwards, Department of Environmental Protection

Michelle Vigen, Department of Environmental Protection

Robert Hagedoorn, Department of Finance

Eric Coffman, Department of General Services

Alex Espinosa, Office of Management and Budget
Elyse Greenwald, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

12/2/14
Date

Economic Impact Statement
Bill xx-14, Commercial Property Assessed Clean Energy Program - Established

Background:

This legislation would establish a Commercial Property Assessed Clean Energy Program (Program) to assist qualifying commercial property owners to make energy improvements; allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; establish that the surcharge on a property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and generally amend the environmental sustainability law.

1. The sources of information, assumptions, and methodologies used.

According to the Department of Environmental Protection, the level of data on the types of projects and commercial property owners eligible for this Program, the cost of the project, and the reduction in energy costs achieved by the owners are very limited and project/site specific. While there are over 4,200 commercial buildings that encompass over 150 million square feet in the County, it is difficult without available data on the demand for eligible projects and the amount of lending to determine with any certainty the economic impact of Bill xx-14.

2. A description of any variable that could affect the economic impact estimates.

To estimate the economic impact with any degree of certainty, the analysis requires the number of potential projects that will be constrained by the level of lending. At a minimum, a project that has been approved should achieve an economic benefit such that the cost savings from a reduction in energy consumption will exceed the cost of the project. However without specificity on the type of project and the cost savings, it is premature to determine the economic benefits of that project. Second, the total economic benefit to the County is also dependent on the amount of available financing by lenders.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

It is expected that a fully functioning Commercial PACE program will incentivize increased construction activity and improve property values and may have additional positive economic impacts on income, employment, and investment in the County. However, as stated in item #2, the total economic effect will depend on the amount of financing available, the number of commercial owners and projects that are eligible for the Program, the costs of renovating and retrofitting a property, the costs of investing in an energy efficiency or renewable energy system and the operating costs of such a system over the life of the system, the reduction of energy

Economic Impact Statement

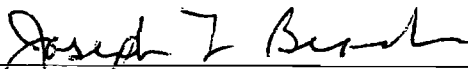
Bill xx-14, Commercial Property Assessed Clean Energy Program - Established

consumption and savings from that reduction, and the additional business opportunities and increase in employment by companies that supply equipment and material and companies that install such equipment and material. The level of detail necessary to ascertain the positive economic effect is limited, and as such, the total economic effect cannot be determined with any degree of certainty.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see item #3

5. The following contributed to and concurred with this analysis: David Platt and Rob Hagedoorn, Finance;



Joseph F. Beach, Director
Department of Finance

10-14-14
Date

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
BILL 6-15 – COMMERCIAL PACE**

March 3, 2015

My name is Robert Hagedoorn, Chief Division of Fiscal Management, Department of Finance, and I am here to testify on behalf of County Executive Isiah Leggett in support of Bill 6-15.

This legislation amends the County Code to establish a Commercial Property Assessed Clean Energy (PACE) program in Montgomery County. This program assists qualifying commercial property owners with making energy improvements; allows private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; and establishes that the surcharge is treated as all other taxes and charges and that unpaid surcharge will be a lien on the real property.

PACE programs have been introduced in various jurisdictions in the country, including Washington DC, San Francisco, Los Angeles, Connecticut and Florida. Collectively, these jurisdictions have used PACE to unlock millions of dollars in energy efficiency and renewable energy investments. Montgomery County would, upon program launch, be part of this national initiative that makes energy efficiency and renewable energy improvements more affordable and provides greater security to lenders in terms of collection of loan payments. Such energy improvements provide environmental and economic benefits to the borrower and the County.

Pursuant to current law, the County Executive submitted a Commercial PACE Program Implementation Plan to the County Council on May 19, 2014. The Department of Finance worked closely with the Department of Environmental Protection, Department of General Services, County Attorney, and Public Financial Management (PFM), the County's consultant, to develop this Plan. This Plan conforms to Senate Bill 186, Clean Energy Loan Programs, adopted by the Maryland General Assembly during the 2014 legislative session. SB 186 enables counties to pass a local law to authorize Commercial PACE for private lenders; collect a surcharge on the property tax bill; and allow certain administrative fees to be charged to borrowers. Mortgage lender consent is required for all Commercial PACE loans.

Bill 6-15 reflects that Implementation Plan and we look forward to implementing this important environmental initiative. Thank you for the opportunity to testify.



TESTIMONY ON BILL 6-15, THE “COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM”

**Nicola Y. Whiteman, Esq.
Senior Vice President of Government Affairs
Apartment and Office Building Association of
Metropolitan Washington**

March 3, 2015

(21)

Good afternoon Councilmembers and staff. I am Nicola Whiteman, Senior Vice President of Government Affairs for the Apartment and Office Building Association of Metropolitan Washington (AOBA). AOBA is a non-profit trade association representing owners and managers of more than 57,000 apartment units and over 24 million square feet of office space in Montgomery County. I am pleased to testify today on Bill 6-15, the "Commercial Property Assessed Clean Energy Program."

I. BILL 6-15 PROPOSES AN INNOVATIVE SOLUTION FOR ACHIEVING ENERGY SAVINGS IN BUILDINGS.

The possibility of a new financing mechanism represents an exciting opportunity to significantly impact energy use in commercial buildings.¹ While building owners can (and many already have) implement low-cost measures to reduce their energy costs, many energy-efficiency projects require a significant financial investment. One must also consider that desirable energy-efficiency upgrades for older multifamily buildings can require cost-prohibitive solutions.² The financing model proposed by the legislation could allow building owners to move forward with "shovel ready" high impact energy efficiency projects. Notably, the legislation is drafted to finance a wide array of energy efficiency projects in commercial properties. The County's diverse building stock have varying project needs given factors such as differences in age, energy systems, and operating patterns.³ As drafted, any energy efficiency and/or energy

¹The definition of "commercial property" in 18A-33(a) includes both commercial office buildings and multifamily properties of a certain size. Section 18A-33(a) ("commercial property" means any real property located in the County that is either not designated for or intended for human habitation, or that is intended for human habitation as a multi-family building of 4 or more rental units.") See *Green Building Facts*, U.S. Green Buildings Council, Feb. 23, 2015, <http://www.usgbc.org/articles/green-building-facts>, copy of which is attached to AOBA's statement ("According to the U.S. Green Buildings Council, buildings account for 73% of electricity consumption and 38% of all CO2 emissions in the United States.")

²See Montgomery County, Maryland Commercial Building Energy Efficiency Policy Study, March 2013, (2013 Energy Report), page 9 ("... multifamily buildings hold greater technical potential than commercial buildings, both in total energy percent savings terms. They tend to be older, are more subject to market barriers, and are harder to finance for energy retrofits. It is apparent that to achieve the County's 25% goal, even on a technical basis, multifamily buildings would have to be a key part of any County policy and program suite.")

³See also 2013 Energy Report, page 7 acknowledging differences between and among commercial and residential buildings. ("Commercial and multifamily market segments present different challenges. The County will need to carefully consider

improvement “that is intended to decrease energy consumption or expand use of renewable energy sources” could potentially qualify for funding under the proposed PACE program. The broad language will permit funding of programs that meet the energy improvement needs of the County’s complex mix of commercial properties.

II. LENDER SUPPORT IS CRITICAL TO SECURING BUILDING OWNER PARTICIPATION AND THE SUCCESSFUL IMPLEMENTATION OF A PACE PROGRAM.

Section 18A-36(c) proposes to make the surcharge senior to a mortgage and all other liens on a property.⁴ Most mortgages prohibit the borrower from doing any act which would impair the security of the lender. Placing a surcharge on a property, which is senior to the mortgage, constitutes such an act and may place a property owner in default. To remedy this problem, the bill includes language similar to provisions applicable to District of Columbia and Virginia PACE programs, requiring the applicant to secure the mortgagee’s prior consent.⁵ See Bill 6-15 § 18-35(a)(2)(“The property owner must submit the following to the private lender or the County designated lender at the time of application for funding ...(A) express written consent of any holder of an existing mortgage or deed of trust on a qualified property.” This consent

targeting its policies and programs to gain the greatest energy savings, while also addressing the barriers and needs unique to each market segment. The Study found that both commercial and multifamily markets exhibit 100% characteristics that must be accounted for in policy and program design if they are to be successful. ... Commercial buildings such as offices, retail, and healthcare differ greatly from each other in terms of energy systems, operating patterns, ownership patterns, and financing structures.”)

⁴B6-15, Section 18A-36(c)(“The surcharge and any accrued interest or penalty constitutes a first lien on the real property to which the surcharge applies until paid. An unpaid surcharge will be, until paid, a lien on the qualified property on which it is imposed from the date it becomes payable.”)

⁵See DC Official Code 8-1778.42(a)(“To qualify for a loan from the National Capital Energy Fund, the property owner shall file with the administrator a loan application including the following: (7) Property owner certification that the Special Assessment will not violate any agreements with any other lender or provision of applicable lender consents...”); Va. Ann. Code § 15.2-958.3. Financing clean energy programs. E. (“A voluntary special assessment lien on real property other than a residential dwelling with fewer than five dwelling units or a condominium project as defined in § 55-79.2: 1. Shall have the same priority status as a property tax lien against real property, except that such voluntary special assessment lien shall have priority over any previously recorded mortgage or deed of trust lien only if (i) a written subordination agreement, in a form and substance acceptable to each prior lienholder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien in the land records where the property is located...”)

provision is necessary as many loan documents prohibit the borrower from assuming additional loans without the lender's consent.

While this consent provision will allow commercial property owners to avoid any potential default issues, it is unclear whether lenders are in fact granting their consent to building owners applying for PACE loans. AOBA encourages the Council and County Executive to solicit feedback from other jurisdictions with existing PACE programs to determine whether lenders are granting mortgagors' requests that they consent to the PACE assessment. In order to achieve meaningful participation by building owners, it is necessary that the County obtain lender support with specifications regarding what lenders will require of property owners if a lender is to approve modification of the loan document so that the property owner can proceed with the loan under the PACE program. Such specifications should thereafter be included in the legislation and any implementing regulations.

In the District of Columbia, which adopted legislation approving the development of a PACE program in 2010, AOBA members are continuing to meet with representatives of the DC PACE program administrator. Our mutually desired goal is to allay any property owner concerns about barriers which continue to discourage their participation in the PACE program. Here, in the County, we are working collaboratively with the County Executive to ensure the successful adoption and implementation of a program which allows for significant building owner participation and reduction of energy consumption and demand. In both jurisdictions, lender participation and consent is the focus of the stakeholder discussions.

III. CONCLUSION

AOBA welcomes the opportunity to continue working with the County on this endeavor and we will be happy to answer any questions at this time.



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Joseph Beach, Director
Department of Finance

VIA: Marc P. Hansen *Marc Hansen*
County Attorney

FROM: Scott R. Foncannon *Scott R. Foncannon*
Associate County Attorney

DATE: February 13, 2015

RE: Bill 6-15, Commercial Property Assessed Clean Energy Program - Established

I have had an opportunity to review Bill 6-15, Commercial Property Assessed Clean Energy Program - Established. This bill establishes a program that facilitates energy improvements for commercial properties within the County and requires repayment of the loan through a surcharge on the owner's property tax bill. The surcharge will be treated as a lien on the property and collected like all other County taxes. The County may select a County designated lender or private lenders may be utilized for the loans anticipated under this program. The loans must be used for energy efficiency or renewable energy improvements as defined in the bill and there are certain specified parameters within the bill for eligibility as well as the permitted amount of the loan.

Establishment of the Commercial Property Assessed Clean Energy Loan Program is authorized by Subtitle 11 of the Local Government Article, Annotated Code of Maryland. Section 1-1104, of the Local Government Article requires that an ordinance enacted under this law must provide that eligibility requirements include a requirement that the County give due regard to the property owners ability to repay a loan provided under the program and in a manner substantially similar to that required for a mortgage loan under Sections 12-127, 12-311, 12-409.1, 12-925, and 12-129 of the Commercial Law Article. This requirement should be included within the bill by amendment or within the regulations that are adopted to administer the program.

Joseph Beach
February 13, 2015
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The bill is otherwise within the authority of the Council and legally sufficient.

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Offices of the County Executive

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URBAN INGENUITY

March 18th, 2015

Dear Councilmember Berliner,

My company, Urban Ingenuity, serves as the private administrator of the Washington DC *PACE Commercial* program, working on behalf of the District Department of the Environment (DDOE). In this capacity we have designed, built, and currently administer the only fully-functional commercial PACE financing program in the national capital region. We are greatly encouraged by your leadership in advancing Montgomery County's well-structured PACE legislation, and we look forward to working with you to ensure that your strong policy framework helps advance a single, well-integrated clean energy retrofit market for the DMV.

In this note, I offer three suggestions for your consideration at this time. These proposals are based on the experience of the *DC PACE Commercial* program, and are intended to improve the effectiveness of your already strong legislative framework as it operates within the market. These potential modifications include:

1. Recording the PACE special assessment surcharge as an agreement in the land record, which only converts to a formal tax lien upon delinquency;
2. Allowing for the assignment of any tax certificate established in delinquency, at the discretion of the County, instead of requiring a formal tax auction; and
3. Allowing a higher total Loan to Value (LTV) threshold, only for those properties that carry little or no existing senior debt.

I offer further personal reflections on each of these points, here, as a citizen of Montgomery County and a stakeholder to this legislation. My Bethesda-based company, Urban Ingenuity, stands ready to provide any additional assistance that may be useful to support your important work in building an effective Montgomery County PACE program and a strong regional PACE market.

1. *Establishing an "agreement" instead of a "lien" in the land record:*

In Washington DC, the current statute establishes PACE financing as a special assessment through the Office of Tax and Revenue, recording an "agreement" on the property's note within the land record, but only registering a "lien" when payment becomes delinquent. In this way, DC PACE is similar to other tax-based assessments and surcharges, including Tax Increment Financing (TIF), Payment In Lieu Of Taxes (PILOT), or "Front Foot Benefits" charges for water and sewer upgrades. These assessments are routinely collected on tax bills, with the full enforcement remedies

of tax obligations, without immediately recording a formal lien. This becomes relevant when a mortgage lender or servicer agrees that the PACE surcharge can enhance property value and improve maintenance, but is prohibited from allowing the establishment of a senior lien. The proposed modification in language, while potentially allowing for a future lien, does not in-itself establish a lien, and can facilitate lender consent for the PACE special assessment.

2. *Allowing assignment of tax certificates instead of requiring auction:*

Under normal tax sale proceedings, a tax certificate is created by the government representing the delinquent debt obligation, and sold in a tax auction to the highest bidder. Investors can buy delinquent debt to collect penalty interest on unpaid taxes (Under DC law this accrues at 18% annually). In Washington DC, however, the PACE statute was amended to allow the Chief Financial Officer to assign this certificate to the mortgage lender, servicer, PACE bond holder, or another appropriate party, at the discretion of the government, instead of requiring a public auction. By assigning the tax certificate to someone who is a party to the PACE transaction, it allows greater opportunity to bring the delinquent PACE payments up-to-date, while allowing for a timely resolution of any outstanding concerns of other lien-holders on the property, including primary mortgage lenders. The *DC PACE Commercial* program supported this amendment because it provides greater certainty and control within the foreclosure process for consenting mortgage lenders that the management of any delinquent PACE notes would not add additional risk to their outstanding mortgage claims. We believe that this feature will increase comfort with the DC PACE structure over time and facilitate lender consent. Establishing a common best practice on this point among regional programs would further help to establish certainty, consistency, and confidence in the PACE security for investors within the regional PACE market. This amendment to the DC Energy Efficiency Finance Act was included in the Sustainable DC Act of 2012 (See: § 47-1336 on Energy efficiency loan foreclosure).

3. *Setting a higher LTV threshold for properties with little or no debt:*

The current Montgomery County PACE statute requires that the PACE assessment not exceed 20% of the property value, and that the total debt on the property (including the PACE assessment and any mortgage debt) not exceed 90% of the property value. Together these provisions ensure that PACE financing will not over-leverage properties. This is responsible underwriting guidance. We strongly support the inclusion of Loan to Value standards within the Montgomery County PACE statute. Such traditional underwriting criteria are critical to ensuring that PACE financing enhances property values and reduces risk for both owners and investors within the county. Within the statute as currently written, however, I wish



to flag one feature that could narrow the utility of the PACE product for certain borrowers. In Washington DC, we have found that there is a class of property owners who have little or no pre-existing debt on their property, and who do not wish to take on new mortgage debt, but for whom PACE provides a valuable alternative. In such a circumstance, where the PACE note represents virtually the entire leverage on the property, the current Montgomery County Statute would have the effect of limiting the total LTV to 20%, rather than the intended cap of 90%. For such properties, an exception might be made, for example, specifying that if the total debt prior to establishing a PACE assessment falls below say 45% of property value (or a similar low benchmark number), then the cap on the total PACE assessment could rise to represent up to 45% of the total property value (or a similar low assessment value that is higher than 20%). Such an accommodation would allow larger PACE financed projects to proceed *only* in circumstances where little or no debt exists on the property, and in all cases, would ensure that total debt on the property remained well within the intended 90% LTV cap. Our experience suggests that this policy adjustment would be especially beneficial for non-profits and other community-based institutions who may have more limited access to traditional capital markets, and for whom PACE can represent a particularly attractive financing mechanism.

Thank you for your leadership and vision in advancing this important bill. Thank you also for your interest in the experiences of the Washington *DC PACE Commercial* financing program, and the opportunity to offer thoughts on the Montgomery County PACE legislation. My company, Urban Ingenuity, stands ready to facilitate your work however we can, and to promote the growth of a strong regional PACE market in the metropolitan Washington area.

Best regards,



Bracken Hendricks
President and CEO, Urban Ingenuity
Program Administrator, DC PACE Commercial



Mihill, Amanda

From: Beach, Joseph
Sent: Monday, March 23, 2015 9:39 AM
To: Berliner's Office, Councilmember; Gibson, Cindy; Berliner, Roger; Hagedoorn, Robert; Crow, David; Foncannon, Scott; Mihill, Amanda
Cc: FRANKEL@pfm.com
Subject: T&E hearing on C-PACE legislation
Attachments: Letter from Urban Ingenuity to Council Member Berliner.pdf; PACE lien estimate.xlsx

Dear Councilmember Berliner;

This email is in response to a question you had on one of the items in the proposed legislation for Commercial PACE (Bill 6-15), specifically whether the C-PACE loan limit of 20% of the assessed value of the commercial property can be set at a higher rate (Bill 6-15 line 154). I have attached the letter from Mr. Hendricks of Urban Ingenuity who recommended in his letter a much higher rate of 45% to allow large C-PACE initiatives to be funded through this mechanism if the existing debt on the property is small. You asked us to revisit this issue and discuss it with our consultant to determine if the recommended limit in the Bill should be modified.

As we noted during the hearing, we relied on the knowledge and experience of our PACE consultant who had recommended an upper limit of 20% for a C-PACE loan. Yesterday, we had an opportunity to discuss this issue again with the consultant who reiterated that 20% is generally the upper limit of PACE programs around the country with most of them falling somewhere between 10% and 20%. The consultant also noted that pushing the limit too high raises the possibility of default – the same as we noted during the T&E hearing this past Wednesday.

Finance also conducted its own analysis of the impact that a PACE surcharge has on a property tax bill and the effect on the tax lien sale in case of delinquency (see second attachment). As you know, one of the strengths of a PACE program is the collection of the annual payment through a surcharge on a property tax bill which provides a high degree of certainty for a lender that they will collect the annual loan payment in full. In case of a delinquency, the surcharge (together with property taxes and related charges) will be collected through a tax lien sale that is held annually. However, while the tax lien sale has a high degree of collection, it cannot guarantee that all tax liens will be sold. Generally, if the tax delinquency as a share of assessment exceeds a certain percentage, investors are less willing to bid on that property. In such cases, investors would have to invest considerably more money while risking that they won't recoup that investment. For example, on average, the tax sale amount that represents a delinquent property tax bill in Montgomery County as a share of the property assessment is only 0.9%.

Using a conservative 7% interest rate (including administrative charge backs), adding a 20% of assessment C-PACE loan to a property tax bill with a 20-year loan term, jumps a property tax bill from an estimated 1.5% of assessment to 4% while a 10 year loan jumps it to nearly 5% and well above the average tax lien ratio of 0.9%. While there may be reasons for an investor to purchase a tax lien with a higher percentage anyway, raising the 20% limit to an even higher level will further reduce the appeal of purchasing such a tax lien. For example, raising the 20% limit to the 45% recommended by Mr. Hendricks would jump the total property tax bill as a share of assessment from 1.5% to almost 7% with a 20 year loan term and over 9% with a 10-year term. At these elevated levels (9% versus a total tax lien average of 0.9%), it is very likely that an investor would not purchase the tax lien which means the C-PACE lender will not receive their loan payment but it also impacts the County since we will not receive our property taxes and related charges like water quality or solid waste to fund those operations.

For these reasons, I strongly recommend that the 20% limit in Bill 6-15 is not raised to a higher level to ensure that the C-PACE program operates effectively and does not negatively impact the County's revenue stream. Please let me know if you have any questions.

Joseph F. Beach, Director
Department of Finance
Montgomery County Government
101 Monroe Street
Rockville, Maryland 20850
(240)777-8870 (Office)

C-PACE LOAN ANALYSIS FOR TAX LIEN SALE EVENTS

Assessment	Taxes	Liability	PACE	Term (years)	Interest + Charges 7%	Surcharge (P & I)	Tax Bill	Ratio (Bill/Value)
\$1,000,000	1.50%	\$15,000	10%	20	\$7,000	\$12,000	\$27,000	2.70%
\$1,000,000	1.50%	\$15,000	10%	15	\$7,000	\$13,667	\$28,667	2.87%
\$1,000,000	1.50%	\$15,000	10%	10	\$7,000	\$17,000	\$32,000	3.20%
\$1,000,000	1.50%	\$15,000	20%	20	\$14,000	\$24,000	\$39,000	3.90%
\$1,000,000	1.50%	\$15,000	20%	15	\$14,000	\$27,333	\$42,333	4.23%
\$1,000,000	1.50%	\$15,000	20%	10	\$14,000	\$34,000	\$49,000	4.90%
\$1,000,000	1.50%	\$15,000	30%	20	\$21,000	\$36,000	\$51,000	5.10%
\$1,000,000	1.50%	\$15,000	30%	15	\$21,000	\$41,000	\$56,000	5.60%
\$1,000,000	1.50%	\$15,000	30%	10	\$21,000	\$51,000	\$66,000	6.60%
\$1,000,000	1.50%	\$15,000	40%	20	\$28,000	\$48,000	\$63,000	6.30%
\$1,000,000	1.50%	\$15,000	40%	15	\$28,000	\$54,667	\$69,667	6.97%
\$1,000,000	1.50%	\$15,000	40%	10	\$28,000	\$68,000	\$83,000	8.30%
\$1,000,000	1.50%	\$15,000	45%	20	\$31,500	\$54,000	\$69,000	6.90%
\$1,000,000	1.50%	\$15,000	45%	15	\$31,500	\$61,500	\$76,500	7.65%
\$1,000,000	1.50%	\$15,000	45%	10	\$31,500	\$76,500	\$91,500	9.15%
\$1,000,000	1.50%	\$15,000	50%	20	\$35,000	\$60,000	\$75,000	7.50%
\$1,000,000	1.50%	\$15,000	50%	15	\$35,000	\$68,333	\$83,333	8.33%
\$1,000,000	1.50%	\$15,000	50%	10	\$35,000	\$85,000	\$100,000	10.00%
\$1,000,000	1.50%	\$15,000	60%	20	\$42,000	\$72,000	\$87,000	8.70%
\$1,000,000	1.50%	\$15,000	60%	15	\$42,000	\$82,000	\$97,000	9.70%
\$1,000,000	1.50%	\$15,000	60%	10	\$42,000	\$102,000	\$117,000	11.70%
\$1,000,000	1.50%	\$15,000	70%	20	\$49,000	\$84,000	\$99,000	9.90%
\$1,000,000	1.50%	\$15,000	70%	15	\$49,000	\$95,667	\$110,667	11.07%
\$1,000,000	1.50%	\$15,000	70%	10	\$49,000	\$119,000	\$134,000	13.40%
\$1,000,000	1.50%	\$15,000	80%	20	\$56,000	\$96,000	\$111,000	11.10%
\$1,000,000	1.50%	\$15,000	80%	15	\$56,000	\$109,333	\$124,333	12.43%
\$1,000,000	1.50%	\$15,000	80%	10	\$56,000	\$136,000	\$151,000	15.10%
\$1,000,000	1.50%	\$15,000	90%	20	\$63,000	\$108,000	\$123,000	12.30%
\$1,000,000	1.50%	\$15,000	90%	15	\$63,000	\$123,000	\$138,000	13.80%
\$1,000,000	1.50%	\$15,000	90%	10	\$63,000	\$153,000	\$168,000	16.80%