

Bill No. 6-15
Concerning: Commercial Property
Assessed Clean Energy Program -
Established
Revised: 3/27/2015 Draft No. 2
Introduced: February 3, 2015
Enacted: March 31, 2015
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

cooling distribution system;

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

(3) an automated energy control system;

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

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

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

(7) an energy recovery system;

(8) a day lighting system;

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

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

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

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

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

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

[[18A-34 – 18A-37. Reserved.]]

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

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

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

122 (c) County designated program manager. The Director may enter into an
123 agreement with a County designated program manager. The County
124 designated program manager must notify the Department of the amount
125 of the surcharge for each account to be collected on the real property tax
126 bill for that year's levy no later than May 1 of each year, and in a format
127 approved by the Department. The County designated program manager
128 will receive the collections from the County, reconcile the collected and
129 billed surcharge for each account, and remit the surcharge amount to the
130 County designated lender or private lender. The County designated
131 program manager must report annually to the County on the participants
132 in the Program by name, property address, property tax account number,
133 amount of each surcharge billed, collected by the County, and remitted to
134 the lender, description of project, any administrative fees, the amount of
135 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

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

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

18A-36. Payment of surcharge; lien.

(a) The County must collect the amount financed through a surcharge on the property owner's real property tax bill and forward payments received by the County 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 due dates for real property taxes. Payment due dates for semi-annual real property taxes are September 30 for the first installment and December 31 for the second installment, and for annual real property taxes the payment due date is September 30.

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

(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. The surcharge will accrue interest and penalty and will be treated and collected like all other County property taxes. Any delinquency will be collected through the County Tax Sale process. The provisions of Title 14, Subtitle 8 of the Tax – Property Article of the Maryland Code that apply to a tax lien will also apply to the lien created under this law. Any delinquent surcharge collected through the County Tax Sale process must be forwarded to the


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

220 **18A-37. Regulations; annual report.**

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

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

227 *Approved:*

228  3/31/15
 George Leventhal, President, County Council Date

229 *Approved:*

230 _____
 Isiah Leggett, County Executive Date

231 *This is a correct copy of Council action.*

232 _____
 Linda M. Lauer, Clerk of the Council Date