AGENDA ITEM #12
March 3, 2015
Public Hearing

MEMORANDUM

February 27, 2015

TO: County Council

FROM: Amanda Mihill, Legislative Attorney amihill

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

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 Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for March 18 at 2:00 p.m.

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.

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Bill No. 6-15
Concerning: Commercial Property Assessed Clean Energy Program - Established
Revised: 1/14/2015 Draft No. 1
Introduced: February 3, 2015
Enacted: August 3, 2016
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	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

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

Article 5. Commercial Property Assessed Clean Energy Program

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

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

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

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

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

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

Department means the Department of Finance.

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

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

(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.

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

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

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

(D) 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) existing mortgage or deed of trust lender consent;

(F) loan to value documentation; and

(G) 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 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

montgomerycountymd.gov/311 MC311 ANSWERING TO YOU 240-773-3556 TTY

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

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

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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

Joseph F. Beach, Director
Department of Finance

10-14-14
Date