T&E ITEM 2
November 8, 2018
Worksession

MEMORANDUM

November 6, 2018

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Amanda Mihill, Legislative Attorney AMihill

SUBJECT: Bill 33-18, Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge

PURPOSE: Worksession – Committee should make recommendations on Bill

Bill 33-18, Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge, sponsored by Lead Sponsor Councilmember Berliner and Co-Sponsors Councilmembers Katz and Elrich, Council President Riemer, Councilmember Hucker, Council Vice-President Navarro, and Councilmember Rice, was introduced on October 2. A public hearing was held on October 23 at which there were six speakers who testified on the Bill. See select correspondence and testimony on ©10-22.

Bill 33-18 would require the County to add the property tax surcharge to the property tax bill within a certain timeframe. Under current law, the County places the tax surcharge to collect a C-PACE loan after the project is completed. According to stakeholders, the placement of the surcharge at that stage requires property owners to obtain other financing to bridge the gap until the C-PACE surcharge is placed. Bill 33-18 would require the surcharge to be placed on the following July 1 after the execution of a clean energy loan financing agreement.

Public Hearing Testimony

At the public hearing, Alexandre Espinosa, Director of Finance testified on behalf of the County Executive. Mr. Espinosa expressed the Executive's concern that Bill 33-18 shifts risk, such as a failed construction loan, from the private sector to the County government (see ©10). Mr. Espinosa suggested 2 different amendments to address this concern:

- Amend Bill 33-18 to remove the language requiring the surcharge to be placed on the July 1 following the execution of a clean energy loan financing agreement. [Council staff note: this essentially reverts back to the existing law.]
- Amend Bill 33-18 to retain the July 1 language, but add a "clawback" provision that would allow the County to remove the surcharge from the property tax bill if the owner does not

obtain required permits or fails to complete the project within 1 year after the date of the loan agreement.

The Council also heard from those in the industry and the environmental community (including the Sierra Club), supporting Bill 33-18. These letters indicate that there is reluctance in the industry to participate in the C-PACE program because the law requires placing the surcharge after project completion.

Berliner Amendments

Proposed amendment: Councilmember Berliner worked with the Department of Finance and industry stakeholders in the hopes of finding amendments that would be satisfactory to both the Executive and stakeholders. While consensus was reached on some language changes, full consensus was not achieved. Councilmember Berliner intends on offering the amendment on ©23-25 at the worksession. These amendments would:

- remove the requirement that the surcharge be placed on the July 1 after the execution of a clean energy loan financing agreement [Council staff note: as recommended by the Department of Finance]; and
- remove the requirement that the property owner had already obtained permits and that the improvement had been already permanently affixed to the property and instead require the owner to confirm that the improvements will be permitted and will be permanently affixed to the property [Council staff note: this essentially allows the surcharge to be placed before project completion].
- The amendments would not include the clawback provision.

County Executive comments: The County Executive does not support Councilmember Berliner's amendment without the "clawback" provision described in the second bullet on the bottom of page 1 in this memo. In the memorandum on ©26-27, the Executive reiterates Mr. Espinosa's concern that the County would bear all of the risk associated from properties that default on paying the tax bill.

Other jurisdictions: Although Council staff has not reviewed every C-PACE law in the country, Greenworks Lending has testified that Bill 33-18 would bring the County's program in line with virtually all other programs in the country. Council staff has reviewed several laws in Maryland counties. Specifically, the laws in Frederick and Howard Counties include the July 1 language and no counties that Council staff surveyed included the clawback language proposed by Finance staff. Prince George's County law, which was enacted earlier this year, closely mirrors Montgomery County law and therefore the surcharge is placed after project completion.

Council staff comments: The concern from Councilmember Berliner is that the placement of the surcharge after project completion is a significant hurdle for building owners to participate in the program. The Executive's memorandum noted that the County's C-PACE program has "operated the most successful program in the State with more projects and total financing than all other counties in the State combined". Projections from Greenworks Lending indicate that the C-PACE program in Montgomery County will remain relatively flat over the course of the next 6 months while C-PACE programs in other counties (combined) is projected to overtake the County's program in the very near future although the programs have not been operational as long as the County's (©28). This is alarming to many supporters of the C-PACE program.

Regarding specifically the "clawback" provision, the Executive believes that this provision is critical if the surcharge is to be placed at project approval rather than project completion. Industry stakeholders have noted their very strong objection to the potential clawback provision because they believe that lenders will no longer lend if this provision is in place. No jurisdiction surveyed by Council staff included this clawback provision.

The central question that Councilmembers must determine is how much risk to the County is acceptable? On the one hand, the Executive has determined that "shifting all risk" to the County is a step too far. On the other hand, Councilmember Berliner and others argue that the level of risk is not that significant. Responding to Council staff questions, Finance identified that 10% of the liens during the June tax sale were for commercial properties and that commercial properties make up 7.3% of all property in the County and concludes that commercial properties are overrepresented in the tax sale. Greenworks Lending submitted a letter indicating that at the close of calendar year 2017, there have been 1,712 C-PACE projects in the country totaling $700 million and that none of these projects have progressed to tax sale. **Council staff recommendation:** Council staff has learned much over the course of the last few weeks. Weighing all of the facts and arguments, Council staff concludes that although there is inherent risk in the current C-PACE program and the Berliner amendments, Council staff believes that this risk is minimal and the benefits of the program's continued success outweigh the minimal risk that comes with enacting the amendments proposed by Councilmember Berliner. Therefore, Council staff recommends enacting Bill 33-18 with the Berliner amendments on ©xx and does not recommend amending Bill 33-18 to include a clawback provision.

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Bill No. 33-18
Concerning: Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge
Revised: 9/27/2018 Draft No. 2
Introduced: October 2, 2018
Expires: April 2, 2020
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ___, Laws of Mont. Co. ___

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Berliner
Co-Sponsors: Councilmembers Katz and Elrich, Council President Riemer, Councilmember Hucker, Council Vice-President Navarro, and Councilmember Rice

AN ACT to:
(1) require the County to add the property tax surcharge to the property tax bill within a certain timeframe; and
(2) generally amend County laws related to the Commercial Property Assessed Clean Energy Program and environmental sustainability.

By amending
Montgomery County Code
Chapter 18A, Environmental Sustainability
Section 18A-36

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. Section 18A-36 is amended as follows:

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) <u>After receiving written notice from the County designated program manager of the execution of a clean energy loan financing agreement, the County must add the surcharge to the property tax bill on July 1 of the year immediately following execution of the clean energy loan financing agreement.</u>

<u>(c)</u> If the property owner sells the qualified property, the buyer must continue to pay the surcharge levied on the annual property tax bill.

[(c)] <u>(d)</u> 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.

Approved:

Hans D. Riemer, President, County Council | Date

Approved:

Isiah Leggett, County Executive | Date

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council | Date

LEGISLATIVE REQUEST REPORT

Bill 33-18

Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge

DESCRIPTION:	Bill 33-18 would require the County to add the property tax surcharge to the property tax bill within a certain timeframe.
PROBLEM:	Currently, the county places the surcharge on a participating property only at the time that the improvements have been completed, leaving a financing gap for the implementation of the improvements and potentially acting as a hurdle to more C-PACE Program projects.
GOALS AND OBJECTIVES:	To require the County to add the surcharge to the property tax bill the July 1 following the date of the clean energy loan financing agreement.
COORDINATION:	Department of Finance
FISCAL IMPACT:	To be requested
ECONOMIC IMPACT:	To be requested
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney 240-777-7815
APPLICATION WITHIN MUNICIPALITIES:	CPACE programs are available Countywide
PENALTIES:	N/A

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MEMORANDUM

September 25, 2018

TO: Council Colleagues

FROM: Councilmember Roger Berliner

SUBJECT: Bill 33-18 -- Commercial Property Assessed Clean Energy Program

Colleagues, I am writing to ask for your support for legislation I will introduce on October 2 that will eliminate a hurdle for building owners hoping to finance energy efficiency and renewable energy upgrades.

In 2015, we adopted legislation to establish a Commercial Property Assessed Clean Energy (C-PACE) Program in Montgomery County. The C-PACE Program allows commercial building owners to access financing for energy efficiency and renewable energy upgrades secured by the property and repaid via a surcharge on their property tax bills. A number of commercial building owners have taken advantage of the C-PACE Program, making needed repairs while reducing their energy use and impact on the environment.

This legislation would improve the C-PACE Program and bring it in line with virtually every other C-PACE Program in the country by placing the surcharge on a participating property at the time of its financing agreement – before construction of the energy efficiency and renewable energy improvements begin. Currently, the county places the surcharge on a participating property only at the time that the improvements have been completed, leaving a financing gap for the implementation of the improvements and potentially acting as a hurdle to more C-PACE Program projects. At least 32 other jurisdictions use C-PACE Programs in which the surcharge is placed prior to construction of the improvements.

I thank you in advance for your consideration of this legislation and I look forward to working with you as it moves forward.

Roger Berliner

ROCKVILLE, MARYLAND

MEMORANDUM

October 19, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 33-18 Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:hpv

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
David Platt, Department of Finance
Dennis Hetman, Department of Finance
David Crow, Department of Finance
Mike Coveyou, Department of Finance
Anita Aryeetey, Office of Management and Budget
Helen P. Vallone, Office of Management and Budget

Fiscal Impact Statement
Bill 33-18 Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge

1. Legislative Summary

   This legislation would require the County to add the property tax surcharge to the property tax bill the July 1 following the date of the clean energy loan financing agreement and would amend County laws related to the Commercial Property Assessed Clean Energy Program (C-PACE) and environmental sustainability.

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 Department of Finance does not anticipate any additional workload impacts for both the Treasury and Fiscal Management divisions as a result of this legislation. Alterations to the property tax surcharge for the C-PACE program can be absorbed into current staff responsibilities. The main potential fiscal impact for the County would be the deleterious effect of a failed loan on the tax sale process.

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

   Revenue and expenditure estimates for the next 6 fiscal years are uncertain because of variables that include the participation of lenders, the amount of available capital, the number of contractors and workers in the County licensed to perform such work, the number of product supply companies in the County, and the demand for such financing.

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

   Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

   Not applicable.

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

   Revenue and expenditure estimates for the next 6 fiscal years are uncertain because of variables that include the participation of lenders, the amount of available capital, the number of contractors and workers in the County licensed to perform such work, the number of product supply companies in the County, and the demand for such financing.

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

   As noted in 2, the Department of Finance does not anticipate any additional workload impacts for the Treasury and Fiscal Management divisions as a result of this legislation.

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

   See 7.

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

   Not applicable.

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

    Revenue and expenditure estimates for the next 6 fiscal years are uncertain because of variables that include the participation of lenders, the amount of available capital, the number of contractors and workers in the County licensed to perform such work, the number of product supply companies in the County, and the demand for such financing.

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

    Not applicable.

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

    See number 2.

13. Other fiscal impacts or comments.

    Not applicable.

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

    Anita Aryeetey, Office of Management and Budget
    David Crow, Department of Finance
    Mike Coveyou, Department of Finance
    Dennis Hetman, Department of Finance

JHughes

Jennifer A. Hughes, Director
Office of Management and Budget

10/22/18
Date

Economic Impact Statement
Bill 33-18, Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge

Background:

This legislation would require the County to add the property tax surcharge to the property tax bill within a certain timeframe and would amend County laws related to the Commercial Property Assessed Clean Energy Program (C-PACE) and environmental sustainability.

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

   Based on a discussion with an industry consultant, the Department of Finance (Finance) ascertained that this legislation could have a positive economic impact. While the legislation could be positive, its impact is uncertain because of other factors such as the participation of lenders, the amount of available capital, the number of contractors and workers in the County licensed to perform such work, the number of product supply companies in the County, and demand for such financing. Finance made no assumptions nor developed methodologies in the preparation of the economic impact statement.

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

   As noted in paragraph 1, the variables that could affect the economic impact estimates are the participation of lenders, the availability of capital, the number of contractors and workers, the number of supply companies, and demand for such financing.

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

   While Bill 33-18 could have a positive economic impact, the amount of that impact is uncertain as noted in paragraphs 1 and 2.

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

   The impact in uncertain because of the factors identified in paragraphs 1 and 2.

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

Alexandre Espinosa, Director
Department of Finance

10/17/2018
Date

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TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT ON BILL 33-18 – COMMERCIAL PACE – PROPERTY TAX SURCHARGE

October 23, 2018

My name is Alexandre Espinosa, Director of the Department of Finance, and I am here to testify on behalf of County Executive Isiah Leggett on Bill 33-18.

When Bill 6-15 was adopted in 2015 to create a C-PACE Program in Montgomery County, significant research was conducted and consideration given to implement a successful Program that also appropriately managed the risk to the County and its tax base. To date, this Program has successfully completed 12 projects representing close to $8.5 million in loans, which we believe is more than all other Counties in the State combined, in both volume of projects and financed amount, according to the information we've been able to find. The Program was also recognized with a National Association of Counties (NACo) Achievement Award in 2017.

The proposed Bill aims to provide collection security to private lenders for C-PACE construction loans through the Real Property Tax billing process. Currently, a C-PACE loan is collected by the County after the energy efficiency project is completed, thereby ensuring the intended energy savings and environmental benefits are delivered prior to placement of the surcharge on the tax bill. The proposed legislation would turn this around – the surcharge would be placed on the tax bill at the time of loan execution, before the project is complete and delivering its benefits. As a result, the proposed change to the program could require the County to collect a C-PACE surcharge for the full term of the loan even if the project were never finished and no energy savings or environmental benefits were achieved.

While Bill 33-18 is intended to enhance the County's successful C-PACE Program, it does so in a way that changes a critical safeguard in the program, shifting risk, such as a failed construction loan, from the private sector to the County government. The County Executive believes that the purpose of the bill can be achieved without impairing the County's property tax collection system. We have proposed amendments to the bill to do that.

Thank you for the opportunity to testify.

AOBA

— APARTMENT AND OFFICE —
BUILDING ASSOCIATION OF
METROPOLITAN WASHINGTON

WRITTEN STATEMENT OF THE APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON IN SUPPORT OF BILL 33-18, ENVIRONMENTAL SUSTAINABILITY - COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM - PROPERTY TAX SURCHARGE

The Apartment and Office Building Association of Metropolitan Washington (AOBA) is a non-profit trade association whose members are owners or managers of commercial and multifamily residential properties, as well as companies that provide products and services to the real estate industry. Currently, the combined portfolio of AOBA's membership is more than 300 million square feet of office space and more than 327,000 residential units in the District of Columbia, Maryland and Virginia. In Montgomery County, members own and/or manage over 62,000 of the county's estimated 90,000 rental units and almost twenty-three million square feet of commercial office space. ***AOBA is pleased to submit a statement in support of Bill 33-18, Environmental Sustainability - Commercial Property Assessed Clean Energy Program - Property Tax Surcharge.***

AOBA is supportive of efforts to facilitate the ability of sophisticated commercial building owners/managers to choose from a menu of energy efficiency financing tools which are best suited for a specific community or real estate portfolio. B33-18 accomplishes this goal by amending the current PACE law to facilitate greater owner/manager participation in the program.

PACE, in addition to other county and state financing mechanisms, represents another option that can significantly reduce energy use in commercial buildings.[1] While building owners have implemented low-cost measures to reduce their energy costs, many energy-efficiency projects require a significant financial investment. The most energy-efficiency upgrades for older multifamily buildings can require cost-prohibitive solutions.[2] The PACE financing model represents another financing option that allows building owners to move forward with "shovel ready" high impact energy efficiency projects.

The newly revised law provides financing for a wide array of energy efficiency projects for commercial properties. Thus, participating owners/managers can use the PACE financing mechanism to target specific energy efficiency upgrades needed for their properties. Furthermore, B33-18 provides to building owners the ability to tailor energy efficiency upgrades in response to the County's diverse building stock by targeting factors such as differences in age, energy systems, and operating patterns.[3] Under current law, any energy efficiency and/or energy improvement "that is intended to decrease energy consumption or expand use of renewable energy sources" could potentially qualify for funding under the existing PACE program. This broad language permits funding of programs that meet the energy improvement

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[1]The 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.")

[2] *See* 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.")

[3]*See 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 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.")

needs of the County's complex mix of commercial properties in furtherance of the County's environmental and energy policies.

AOBA welcomes the opportunity to continue partnering with the County on this endeavor and incentive-based initiatives that facilitate energy efficiency improvements in commercial and multifamily buildings, while improving the environment by mitigating carbon and related greenhouse gas emissions.

BOLAND

30 West Watkins Mill Road ■ Gaithersburg, Maryland 20878
(240) 306-3000 ■ 1-800-552-6526 ■ FAX (240) 306-3400
www.boland.com

November 2, 2018

Councilman Roger Berliner
Montgomery County Council
Council Office Building
100 Maryland Avenue, 4th Floor
Rockville, MD 20850

Councilman Berliner,

Boland is the recognized leader of comfort solutions in the community and in the industry. Boland has been based in Montgomery County since 1960. Presently we employ more than 300 professionals. We help customers succeed by providing innovative solutions that optimize indoor environments through a broad portfolio of energy-efficient heating, ventilating and air conditioning systems, building, contracting and energy services, parts and supplies, and advanced controls for commercial buildings.

We applaud the Montgomery County Council for their environmental leadership in passing the Commercial PACE program. Boland has completed 18 projects across Maryland and the District of Columbia with several more in development. The program has been meaningful in our business. We support its positive impact on sustainability, jobs, and economic development across the region. The program is helping many of our clients overcome the first-cost hurdle to invest in sustainable building retrofits.

Unfortunately, the lack of construction lending in Montgomery County's Commercial PACE program is a major drawback that will prevent Boland from focusing more on Montgomery County PACE projects. Bridging the construction costs during complex and sometimes lengthy retrofits puts a significant strain on our balance sheet. When these costs are shifted to our clients they typically tap into their cash reserves or lines of credit which defeat the purpose of the program.

We urge the County Council to act to amend the Commercial PACE program to allow for PACE funding through construction. This amendment would be consistent with the other active programs across our region.

Thank you for your consideration in the matter.

James M. Boland

We Are Not Comfortable Until You Are

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Bill 33-18, Environmental Sustainability - Commercial Property Assesses Clean Energy Program - Property Tax Surcharge

Good afternoon,

My name is Jim Driscoll. I am the Coordinator of the MOCO Chapter of The Climate Mobilization.

We are the group that asked the Council to declare a climate emergency last December. We formed a grassroots coalition of groups in MOCO concerned about the climate including 350 MOCO, MOCO Faith Alliance for Climate Solutions, the Green Party, Glen Echo Indivisible and the Takoma Park Mobilization Environmental Committee among others.

This bill is consistent with the legislative agenda of our coalition.

As the Council will hear shortly, in order to meet this emergency, nearly all of the buildings in MOCO will have to have deep retrofits to reduce their greenhouse gas emissions.

The question is who will pay for these retrofits. This bill makes it easier for private capital to be used for that purpose.

As the news has finally begun to recognize the seriousness of this crisis, we hope this is only one of many new actions this Council and its successors will take to respond in time to protect the people of this County.

Testimony of Jim Driscoll, 9211 Topeka St., Bethesda, MD 20817

CLEANFUND

October 22, 2018

County Council
Montgomery County
100 Maryland Avenue
Rockville, MD 20850

RE: Bill 33-18, Environmental Sustainability - Commercial Property Assesses Clean Energy Program - Property Tax Surcharge

Dear County Council Members:

I am writing on behalf of CleanFund, a nationwide commercial PACE (C-PACE)company that has financed PACE projects throughout the country. We are extremely interested in financing PACE projects that will spark economic development, create greener buildings, and create jobs in Montgomery County. The current law, as drafted, has prevented both developers and capital providers from moving forward on projects because the law is out of compliance with C-PACE best practices throughout the country and, more importantly, the financial realities of our project financing is completed. The amendments put forward in Bill 33-18 will remedy this issue and allow commercial PACE to thrive in Montgomery County.

Thank you for your attention to this important issue.

Sincerely,

Michael Yaki

MICHAEL YAKI
Vice President & Sr. Counsel, Policy and Programs
CleanFund Commercial PACE Capital

era

November 1, 2018

To: Montgomery County Council
cc: PACE Financial Services
From: Mike C. Cain, era building solutions
Re: Montgomery County Property-Assessed Clean Energy (PACE)

Dear County Council:

We are a small local business based out of Bethesda, MD founded in 2017 to design and implement energy-based building solutions for our clients in MD and DC. We would like to—first and foremost—commend the Council for being the first in the region to adopt a Commercial Property-Assessed Clean Energy (PACE) Program in 2015 and—secondly—bring to your attention one aspect of the Montgomery County PACE Program which severely restricts its effectiveness.

In the past, I have personally worked closely with PACE (and we still do in many other Maryland Counties) to enable energy-based projects for our commercial building clients. The tool has proven to be an extremely effective method for...

a. driving market behavior toward more efficient and sustainable purchases.
b. supporting local businesses to provide unique value to local property owners and managers, thus driving local employment and entrepreneurship.
c. providing counties' employees and residents with cleaner, healthier buildings and environment.

However, in Montgomery County (as opposed to all other Maryland C-PACE enabled Districts), funds are not currently able to be dispersed to contractors until after final project completion. Given that PACE is meant to drive large-scale behavior with projects of $250,000 to $3+M, industry standard would be for an owner to disperse funds to a contractor based on percentage of project completion (less minor retention).

This delayed payment results in several issues in leveraging PACE in Montgomery County:

1. Many contractors have chosen not to perform projects under PACE (never using the tool to help owners improve the county's buildings & environment).
2. Counter to PACE's purpose, many contractors offering PACE in the County recommend less impactful projects in order to minimize the adverse financial effects of larger work.
3. Smaller contractors (or those helping large quantities of owners to leverage PACE) are forced to obtain separate construction loans to bridge the cashflow gap, passing the costs of finance on to owners, thus reducing their competitiveness against larger, non-local organizations, and reducing the efficacy of the overall project for the local building owner.

We thank you for your time and efforts and sincerely appreciate your support in adapting Montgomery County C-PACE to improve its impact on our County. Please call or email with questions at any time.

Proud Montgomery County Resident and Business Person,

Mike C. Cain
Managing Director
era building solutions
240.778.9971
mcain@erabuildingsolutions.com

GREENWORKS

Aaron Kraus
Greenworks Lending
4915 St. Elmo Ave. Suite 200
Bethesda, MD 20814

November 2, 2018

Councilmember Roger Berliner
Chair - Transportation, Infrastructure, Energy and Environment Committee
100 Maryland Avenue
Rockville, MD 20850

Dear Councilmember Berliner:

Thank you for your leadership regarding Commercial Property Assessed Clean Energy (C-PACE). The C-PACE program is an important sustainability program and we are working hard to drive significant environmental goals for the County and its commercial building stock.

Important changes and amendments proposed in Bill 33-18 will bring the County in-line with virtually all other jurisdictions in the United States. This will enable us to scale the program and bring our community further benefits.

According to market data[1], at the close of Calendar Year 2017, there have been 1,712 Commercial PACE projects in the United States totaling more than $700 million. We expect 2018 data to add to this considerably. To the best of our knowledge, no Commercial PACE projects have progressed all the way to tax sale.

Thank you for your continued dedication to our shared environment and our joint efforts to bring efficiency and clean energy to our County.

Sincerely,

Aaron Kraus
Vice President – Market Activation and Policy
Greenworks Lending

[1] Data can be found here - http://pacenation.us/pace-market-data/

JOHN MARSHALL BANK

October 12, 2018

County Council for Montgomery County, Maryland
Rockville, Maryland

RE: Bill 33-18, Environmental Sustainability-Commercial Property Assessed Clean Energy Program-Property Tax Surcharge [October 23, 2018]

Councilmembers,

As a commercial lender, I have been active with the PACE program in the District of Columbia, after working with the DC PACE program administrator to make their program "bankable" several years ago. I have been working with several groups and individuals involved in promoting the establishment of a C-PACE program for Montgomery County, which we intend to support. In reviewing the memorandum from Councilmember Berliner dated September 25, 2018, and the language of the proposed amendment, I believe the C-PACE program will become more acceptable by local bank lenders if the C-PACE lien on real property is effective on the date that C-PACE documents are executed, so that it attaches to the property to be improved immediately, with C-PACE payments to be added to property tax bills on a date after completion of the improvements. If there is a gap between funding and recordation of the C-PACE lien, lenders will likely require some form of credit enhancement to bridge this gap to avoid an unsecured non-recourse advance of funds for the eligible energy efficient improvements. The alternative will be to fund the improvements with tradition secured financing to be repaid once the C-PACE lien is recorded: the costs of such interim financing will likely reduce the benefits of the C-PACE program to property owners, resulting in more limited use of the program.

I recommend that the proposed amendment clarify when the C-PACE lien for the voluntary real estate tax special assessment lien can be recorded on the real property being improved to avoid any gap with C-PACE funding: I believe this change will make your program "bankable" for local lenders.

Sincerely,

Thomas A. Nida
Senior Vice President & DC Regional Executive

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recurrent
INNOVATIVE SOLUTIONS

Friday, November 2, 2018

Attn: Councilmember Roger Berliner
100 Maryland Avenue, 4th Floor
Rockville, MD 20850

Re: Montgomery County Commercial Property Assessed Clean Energy (C-PACE) Program

Dear Councilmember Berliner,

Recurrent Innovative Solutions, LLC, an energy solutions provider headquartered in Rockville, Maryland, has successfully implemented two C-PACE projects in Montgomery County, to include the first project and the largest projects to date in Montgomery County. In each instance the property owner has had to secure separate construction financing for the project because Montgomery County does not allow C-PACE financing to close prior to the completion of construction.

We have encountered significant reluctance to use the C-PACE program in Montgomery County solely due to the construction financing issue. The inability to use the C-PACE financing during construction adds additional costs for the property owner and is an impediment to the use of the C-PACE program in Montgomery County. Every other jurisdiction in Maryland, and to the best of our knowledge in the nation, allows C-PACE financing to close prior to commencement of construction.

We have begun focusing all our efforts in other jurisdictions where C-PACE funds are available to finance construction. We are currently developing C-PACE projects in Howard, Frederick, Talbot, Wicomico, and Garrett Counties in Maryland. The C-PACE program has significant potential to benefit property owners in Montgomery County, and reduce carbon emissions. Montgomery County was a leader in enacting its C-PACE program, due to your actions on the Council. I hope you will again take action to assure the Program achieves its promise in Montgomery County.

Respectfully,

Keith Derrington
Chief Operating Officer
Recurrent Innovative Solutions, LLC

1390 Piccard Drive · Suite 120 · Rockville, MD 20850 | Tel: 301.795.1440 | www.recurrent.net

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SIERRA CLUB
FOUNDED 1892

Montgomery County Group

October 23, 2018

Testimony of Montgomery County Sierra Club on Bill No. 33-18

President Riemer and Councilmembers, my name is Michal Freedman and I am here as Vice Chair of the Montgomery County Sierra Club to support Bill No. 33-18. As you know, Bill 33-18 amends the Commercial Property Assessed Clean Energy (C-PACE) Program to address the financing gap resulting from previously enacted PACE legislation. Under the existing legislation, the tax surcharge that is used to pay back loans for energy efficiency and other energy improvements is deferred until project completion, which often necessitates additional loans to cover the period while the work is being done. By allowing earlier financing, the amendment would remove a major hurdle to expanding the PACE program.

The recent scientific report from the International Panel on Climate Change brought home again the narrow window we face to make the cuts to carbon emissions needed. Commercial buildings in Montgomery County's annually discharge about 3 million metric tons of greenhouse gases. This is nearly 30% of total County emissions.[1] Numerous existing buildings are decades old and have potential for major cost-effective energy retrofits. In a survey of 52 building owners and managers in Montgomery County, 85% of them said that lack of capital is the key barrier to energy efficiency upgrades.[2]

It has been estimated that it would cost about $2 billion to reduce energy use by 25% in commercial buildings in Montgomery County.[3] C-PACE is designed to overcome <u>private commercial</u>

market barriers to financing energy efficiency and other clean energy projects and unleash private funding for these projects.

C-PACE has many success stories. To tell one, I recently heard Joe Richardson, owner of the Bar-T Mountainside summer camp in Frederick County, describe how he used C-PACE to finance $250,000 in solar panels, a geothermal loop, energy efficiency upgrades, lithium ion storage batteries, and smart grid technology, which together are expected to make his facilities net zero energy. He put no money down, thus not tying up any of his capital. His electric utility bill savings are expected to cover the costs of his loan payments over time. His property value will appreciate, while his operating expenses and emissions decline. He called this "a no-brainer."

One final comment. C-PACE is intended to align private financing with commercial self-interest in reducing utility costs. Yet, a number of PACE vendors report they meet with resistance to PACE – builder owners are wary. They worry the program is "too good to be true." Just as it is important to correct this problem in the current PACE legislation, for the program to be effective, the County must find ways to dispel the "too good to be true" misconception and create trust in and enthusiasm for its benefits.

We urge passage of Bill 33-18 and creative ways to making it fully effective.

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[1] Report of the Montgomery County Climate Mobilization Workgroup, June 5th, 2018, Appendix C.

[2] Montgomery County Commercial and Multifamily Building Study, 2013.

[3] Coalition of Green Capital. Slides presented to MoCo DEP.

[4] 2018 Report of the US Office of Energy Efficiency and Renewable Energy

AMENDMENT

To Bill 33-18

BY COUNCILMEMBER BERLINER

PURPOSE: To make amendment to Bill 33-18

Beginning on page 2, after line 1, insert and change Section 18A-35 to read:

18A-35. Eligibility.

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

(a) *Eligibility.*

* * *

(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[[.]]; and

(C) confirmation that the proposed improvements will be properly permitted and permanently affixed to the qualified property and comply with all applicable State and federal statutes and regulations, as determined by the appropriate regulatory authority.

* * *

(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]] must be imposed under a written agreement between the County designated lender or private lender and the County. The surcharge will be recorded in land records of the County, at the expense of the owner, within 30 days of the execution of a clean energy loan financing agreement.

(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;

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

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

(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;

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

[[(G)]] (E) appraised value of the qualified property as certified in the appraisal report submitted by a Certified General Real

Estate Appraiser if the eligibility requirement in 18A-35(a)(4) is based on the appraised value of the qualified property;

(H)]] (F) loan to value documentation; and

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

* * *

Beginning on page 2, lines 63-67, change Section 18A-36(b) to read:

(b) After receiving written notice from the County designated program manager of the execution of a clean energy loan financing agreement, the County must add the surcharge to the property tax bill [[on July 1 of the year immediately following execution of the clean energy loan financing agreement]].

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 5, 2018

TO: Hans Riemer, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Bill 33-18, Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Property Tax Surcharge

The County's Commercial Property Assessed Clean Energy (C-PACE) program was created to assist qualifying commercial property owners to access financing for energy efficiency and renewable energy upgrades. The loans for the upgrades are secured by the property and repaid through a surcharge on the property tax bill. To date, the program has financed nearly $8.5 million in C-PACE loans for much needed repairs, which has led to reduced energy usage and diminished environmental impacts. The County's program has accomplished early milestones by completing the first C-PACE project in the State and operating the most successful program in the State with more projects and total financing than all other counties in the State combined. The County's program was also recognized in 2017 with a National Association of Counties Achievement Award.

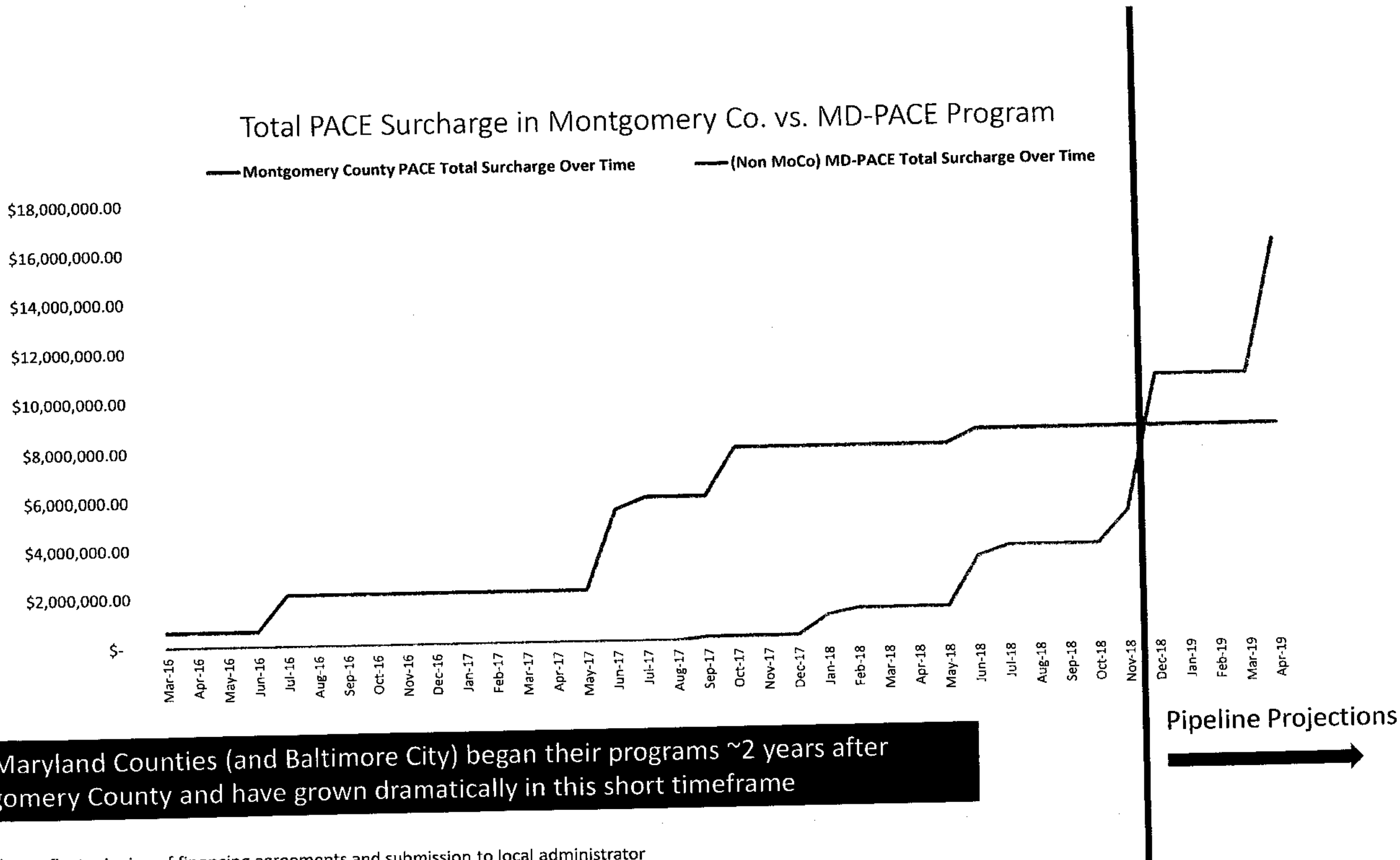
Even with the early success of the program, we understand the continuous need to identify opportunities to improve how it operates, consistent with our obligation to follow State law and protect the County's tax base. That is why we worked in good faith to offer suggested amendments that would accomplish the original intent and purpose of Bill 33-18. In fact, we agreed to add the surcharge to the property tax bill at the point of project approval, rather than after project completion, as is currently required under the County law. Since the original bill was introduced on October 2, however, Councilmember Berliner and Greenworks Lending have proposed additional changes to the law, which would remove important eligibility requirements for a property owner participating in the program. After reviewing these changes with the Department of Finance and the Office of the County Attorney, I believe these changes exceed the original intent of Bill 33-18 and remove fundamental and necessary safeguards intended to minimize the risk to the County and our tax base. The proposed changes shift **ALL** of the risk of defaulting properties from the banks, that are in the business of lending money, to the County which has above all an obligation to its residents of prudently managing its finances.

Even with the additional proposed changes to eligibility requirements, and removal of County safeguards, we believe that the new risk borne by the County can be mitigated by adding a termination provision to the bill. This provision would allow, but not require, the County to remove a C-PACE surcharge from a property tax bill in the event a project is abandoned or never completed. Absent this reasonable modification to the proposed bill, the County would be subject to the following major risks when a C-PACE surcharge for an uncompleted project is added to the property tax bill for a term of up to 20 years:

- First, there is a risk that the property owner chooses not to pay their tax bill and the property is taken to tax sale. Depending on the amount of the annual surcharge, the property can become undesirable or even unable to be sold at tax sale. The County sells its liens in randomly assigned batches of about 50 properties; therefore, a single property burdened with a disproportionately large C-PACE surcharge may prevent the County from selling liens and collecting taxes for up to 50 properties. This not only results in the C-PACE lender not receiving its annual surcharge amount for that specific property, but also the County's inability to collect all taxes and fees on the property tax bill for this and any other property included in that tax sale batch.

- Second, collecting a surcharge for a loan that never becomes a completed C-PACE project may violate State law. The purpose of the enabling legislation for the C-PACE program is to provide loans for energy efficiency projects and it requires that the County ensure that a property owner is able to repay the loan. But, if a project is never completed, it cannot qualify as a C-PACE project because no energy efficiency or renewable energy is ever realized. Since the intent of the enabling legislation is to loan money for the actual construction of energy efficiency projects, the County *may* exceed its authority under the enabling legislation by adding a lien to a property tax bill for a project that is never completed.

I respectfully request that the Council include the suggested termination provision to Bill 33-18 to mitigate the new risk to the County of assuming all of the default risk of these loans and to safeguard our property tax base.



Most Maryland Counties (and Baltimore City) began their programs ~2 years after Montgomery County and have grown dramatically in this short timeframe

Source: All data reflects signing of financing agreements and submission to local administrator