T&E Item#1
February 28, 2022
Worksession

M E M O R A N D U M

February 23, 2022

TO: Transportation and Environment Committee

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 46-21, Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Amendments

PURPOSE: Worksession – Committee Recommendation expected

Expected Attendees:

Bill 46-21, Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Amendments, sponsored by the Council President at the request of the County Executive, was introduced on November 30, 2021. A public hearing was held on January 11, 2022, with two speakers.

Bill 41-21 would:

1. amend the County's C-PACE financing program to allow climate-related improvements for eligible projects;
2. establish 12-month retroactive financing for eligible C-PACE measures;
3. create a 5-year pilot for increased loan-to-value amounts for qualified properties;
4. clarify new construction participation requirements;
5. remove the County designated lender from the County's C-PACE program; and
6. generally revise County law regarding environmental sustainability.

BACKGROUND

In 2015, the County established the Commercial Property Assessed Clean Energy Program (C-PACE) under Section 18A-33, which defines C-PACE as "a program that facilitates energy improvements and requires repayment through a surcharge on the owner's property tax bill." Since the County's adoption of the C-PACE program, there are have been several amendments to improve the program over time, including expanding options to new construction projects.

C-PACE is not a federal program, nor does not it require public funding, instead, it requires state-enabling legislation that authorizes local jurisdictions to implement certain program requirements. C-PACE is a tool that provides financing to a property owner that pays the upfront costs associated with residential energy efficiency or renewable energy improvements. Maryland passed enabling legislation in 2014 (Md. Local Government Article §§1-1102 – 03) to authorize local governments to adopt a C-PACE financing program that entailed specific provisions for loan repayment of energy efficiency improvements or renewable energy devices.

According to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, more than 30 states have adopted C-PACE enabling legislation because it provides opportunities for investment in local businesses, energy and cost savings, and job creation.[1] There are at least 18 local jurisdictions that have authorized a C-PACE program, including Baltimore County, Frederick, Howard, and Prince George's County.[2]

The County Executive Memorandum states, that since C-PACE's enactment, thirteen (13) projects totaling more than $10M have been financed by private capital funding for energy efficiency and renewable energy projects (©17). Most recently, the County selected the Montgomery County Green Bank as the new C-PACE Program Manager – this was an effort to establish a streamlined process for property owners to obtain financing resources from a dedicated partner that funds comprehensive building energy improvements and increase the opportunity to support more projects.

PURPOSE

The purpose of this Bill is to align the County's law with recent state enabling legislation that authorizes the County to expand eligibility for different types of eligible clean energy projects. The projects are financed through the County's C-PACE program for both new and existing commercial buildings.

BILL SPECIFICS

Under this Bill, it would amend the County's current C-PACE law by removing the prescriptive list of measures and aligning with the recent state legislation (2021 Session, HB 517) to include a broader range of climate-related improvements, including, water efficiency, environmental health, safety upgrades, and resiliency measures as eligible financing projects for commercial office, industrial, retail, hotels, private schools, health care facilities, agriculture, nonprofits, and certain multifamily properties.

In addition, Bill 46-21 would allow for 12-month retroactive financing for eligible C-PACE measures that reduces energy efficiencies. Previously, County law did not provide the option for retroactive financing. Further, the Bill seeks to create a five-year pilot for high loan-to-value amounts for existing and newly constructed buildings. After the five-year pilot period expires, the C-PACE program would revert to the original loan-to-value ratios unless extended by the Director of Finance.

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[1] Commercial Property Assessed Clean Energy: A Factsheet for State and Local Governments. <https://www.energy.gov/sites/prod/files/2017/10/f39/FL1710_WIP_CPACEv2.PDF> Accessed on 11/24/21.

[2] https://md-pace.com/where-is-pace-in-md/

Further, it would clarify that new construction participation requirements for projects that meet and exceed building code up to 5% can access C-PACE financing. Lastly, it would remove the requirement for the County designated lender from the program because the position has been filled by the Montgomery County Green Bank, and therefore, the provision is no longer necessary.

PUBLIC HEARING

Adriana Hochberg, Acting DEP Director, testifying on behalf of the Executive, strongly supports the County expanding C-PACE opportunities for commercial property owners (© 39). Ms. Hochberg mentioned that C-PACE has been an important tool raised since the program started in 2016, providing over $10 million in projects financed by private capital funding for energy efficiency and renewable energy projects; further leveraging these existing opportunities will assist property owners meet the 2018 International Green Building Code and the proposed legislation, Bill 16-21 – Building Energy Performance Standards. (© 39). Stephen Morel, Green Bank CEO supported the Bill as introduced. (© 40).

DISCUSSION FOR THE T& E COMMITTEE

1. What is the fiscal impact of Bill 46-21?

The fiscal impact statement provided by the Office of Management and Budget (OMB) states the Bill will not directly impact the County's budget. The implementation of the legislation will be performed by the Montgomery County Green Bank and capital funding for C-PACE projects derives from the private sector. © 23

2. What is the economic impact?

By broadening the scope of the County's Commercial Property Assessed Clean Energy (C-PACE) Program in terms of project type, financing flexibility, and lender eligibility, the Bill likely would increase private sector capital investment in commercial buildings in the County. OLO anticipates the Bill will have a positive economic impact. © 31

3. Should the Committee adopt any of the recommended amendments by OLO as identified in the Racial Equity and Social Impact Statement?

The Office of Legislative Oversight (OLO) anticipates that Bill 46-21 could widen economic inequities by race and ethnicity but could also narrow health inequities by race and ethnicity. Since the anticipated economic benefit of this bill for White residents is more direct than the anticipated health benefit for residents of color, OLO finds that Bill 46-21 has a minor negative impact on racial equity and social justice (RESJ) in the County. To improve the RESJ impact of Bill 46-21, OLO offers several recommended amendments for Council consideration. (© 26).

OLO Suggested Amendments (© 29):

a. *Target C-PACE investments in neighborhoods with the worst air and greenhouse gas emissions. The recommendation is to use mapping to identify vulnerable neighborhoods, measure the success of mitigation strategies by whether they protect everyone, and design research that identifies opportunities for targeting greenhouse gas reductions to reduce toxic air emissions in highly polluted neighborhoods.*

Council staff agrees that a targeted approach to provide clean energy projects in specific neighborhoods or for buildings that emit a large amount of greenhouse gases (GHG) would be a direct benefit to communities; however, this approach is better suited for another legislation currently under consideration by the Council - Bill 16-21, Environmental Sustainability - Building Energy Performance Standards (BEPS)[3]. The BEPS bill will require certain buildings to provide not only benchmarking reporting data based on energy usage, but owners will be required to meet certain performance standards to reduce GHG. The data received during benchmarking will help to inform commercial and certain multifamily building owners to identify areas of need to improve energy efficiency, coupled with a C-PACE program in place, the program will provide the market a resource to access a financial product to help make the necessary climate-related improvements to reduce GHG.

b. *Create a certain percentage of C-PACE financing exclusively for commercial buildings in Equity Emphasis Areas.*

An Equity Emphasis Area (EEA) is defined by the Metropolitan Washington Council of Government (MWCOG) as locations within the U.S. Census tract-level data that identifies communities with high concentrations of low-income individuals and/or racial and ethnic minorities.[4] It is a tool where key stakeholders use the data to make informed decisions related to prioritizing and investing in underserved communities and disproportionately impacted populations.

While this Council has proactively used EEAs to inform legislation that seeks to reduce disparities and provide more equitable access for certain communities, for example, the most recently passed, Bill 44-21, Montgomery County Green Bank – Fuel Energy Tax – Funding, that requires at least 20% of funds used to support bank activities in EEAs in the County.

However, the Office of County Attorney has opined that a legislative mandate using EEAs as a basis without a legislative record of discrimination may violate the Equal Protection Clause of the 14th Amendment of the U.S. Constitution.

Also, there are no County funds appropriated to the C-PACE program nor does Green Bank contribute any funding, rather building owners work with a third-party lender to

[3] Montgomery County Council Legislation. Bill 16-21, Environmental Sustainability - Building Energy Use Benchmarking and Performance Standards – Amendments. https://apps.montgomerycountymd.gov/ccllims/BillDetailsPage?RecordId=2707&fullTextSearch=BEPS

[4] Equity Emphasis Area: Geographic Specificity to Aid Actions. <https://www.mwcog.org/documents/2021/06/09/equity-emphasis-areas-geographic-specificity-to-aid-actions-equity/>

access private funding for building energy efficiency improvements. Therefore, the suggested amendment to set aside a certain amount is not a feasible option.

c. *Require the Green Bank to encourage commercial property owners to partner with Minority Business Enterprises for C-PACE investments. Encouraging commercial property owners to seek out minority-owned businesses to deliver services and partnering with minority vendors and business associations toward this end could foster equitable economic development that benefits a broader set of business interests in the County by race and ethnicity.*

Council staff researched several local jurisdictions' that offers a C-PACE program and identified Prince George's County has a requirement that encourages owners to seek minority-owned business, specifically under Section 10-319 of the Prince George's County Code, it states:

> The property owner shall agree to utilize "best efforts" to spend 35% of the total costs incurred on the energy efficiency and clean energy improvements on contracts with County-based minority business enterprises, County-based small businesses, County-based businesses, and minority business enterprise firms. The property owner shall also submit a Local Spending Plan to the program manager for approval, subject to the satisfaction of the program manager. The Local Spending Plan shall demonstrate the manner in which the property owner will satisfy its commitment to meet the spending goal set forth in this paragraph.

Council staff supports OLO's recommendation to incorporate an opportunity to encourage and promote the availability of the minority-owned business to deliver services; therefore, Council staff recommends the Committee adopt a less stringent approach than Prince George's County C-PACE requirement. The Council should require an application provided by Montgomery County Green Bank on an approved County form that should have an option that includes a section where an owner can certify that "best efforts" were made to hire minority, small, or local businesses.

Amend lines 166, as follows:

(B) a property owner must describe and certify on an application submitted for review that best efforts will be used to contract with a minority-owned business enterprise, small business, or County-based business for energy efficiency, renewable energy, and other approved climate related improvements.

In addition, Council staff recommends language to strengthen the requirement for Montgomery County Bank to increase its outreach and education and it should detail those efforts in the annual report for the Council's review.

Add lines 342, as follows:

(c) The report must include details about the outreach and education efforts by the designated program manager to encourage and disseminate information related to contracting with minority-owned businesses, including marketing strategies, promotions, and website presence.

Decision Point: Whether to adopt an amendment to provide for "best efforts" by a building owner and require additional reporting requirements for the annual report?

Next Steps: Whether to recommend Bill 46-21 for action?

This packet contains:	Circle #
Bill 46-21	© 1
LRR	© 15
County Executive Memorandum	© 17
Fiscal Impact Statement	© 23
RESJ Impact Statement	© 26
Economic Impact Statement	© 31
Public Testimony	
Adriana Hochberg	© 39
Stephen Morel	© 40

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Bill No. 46-21
Concerning: Environmental Sustainability - Commercial Property Assessed Clean Energy Program - Amendments
Revised: 11/22/21 Draft No. 1
Introduced: November 30, 2021
Expires: May 30, 2023
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: ______
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) amend the County's C-PACE financing program to allow climate-related improvements for eligible projects;
(2) establish 12-month retroactive financing for eligible C-PACE measures;
(3) create a 5-year pilot for increased loan-to-value amounts for qualified properties;
(4) clarify new construction participation requirements;
(5) remove the County designated lender from the County's C-PACE program; and
(6) generally revise County law regarding environmental sustainability.

By amending
Montgomery County Code
Chapter 18A, Environmental Sustainability
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:

18A-33. Definitions.

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

Certified General Real Estate Appraiser means an individual who is certified as a certified real estate appraiser for general real estate under Title 16 of the Business Occupations Article of the Maryland Code.

Climate Related Improvements or Improvements include measures that address:

(1) renewable energy;

(2) energy and water efficiency;

(3) environmental remediation;

(4) grid resilience; or

(5) property resilience.

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 more than 4 rental units.

Commercial Property Assessed Clean Energy Program or *Program* means a program that facilitates Climate Related Improvements [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;] less energy to perform the same task.

[(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.]

Environmental remediation means any project that is intended to remove environmental or health hazards, including addressing indoor air quality and building material contaminants.

Grid resilience means any capital improvement investment that addresses reliability improvements during electrical service disruptions and that are consistent with Public Service Commission regulations on interconnection and franchising.

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

Property resilience means any built or nature-based improvement that increases the capacity of a property to withstand natural disasters and the effects of climate change.

Qualified property means any new or existing 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. A renewable energy source does not include petroleum, nuclear, natural gas, or coal.

[*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.

Sec. 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.*

(1) 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] a Climate Related Improvement. The agreement must provide for the repayment of the loan for the [improvement] Improvement and any cost of administering the Program through a [surcharge] 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] <u>Climate</u> <u>Related</u> <u>Improvement</u>. The third-party lender must submit a request for collection of each [surcharge] <u>Surcharge</u> 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.

(2) The third-party lender must record a document among the land records of Montgomery County within 30 days of the time the loan is funded, which provides notice of the Commercial Property Assessed Clean Energy loan associated with the property and that the surcharge will be collected and have lien status like all other real property taxes.

(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] <u>Surcharge</u> 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] <u>Surcharge</u> for each account, and remit the [surcharge] <u>Surcharge</u> 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] Surcharge billed, collected by the County, and remitted to the private 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.]

Sec. 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 1-401, 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the Maryland Code. The County has authority to deny approval of any loan under the Program that, in its sole determination, does not meet these Sections 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;

(B) verification that there are no delinquent fees, taxes, water or sewer charges, liens, or other special assessments on the qualified property; and

(C) confirmation that:

(i) the proposed [improvements] Climate Related Improvement 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[.]; or

(ii) final inspection of an installed Climate Related Improvement has occurred within a one-year (12 months) period immediately preceding the date of Program application.

(4) For new commercial construction, the property must be designed to meet or exceed the energy performance required by the County building code that is in effect at the time a property owner applies to participate in the Program.

(5) The loan amount under this Program must meet the following criteria:

(A) [For existing] Existing commercial construction[:]. This subsection, 18A-35(a)(5)(A), shall be in effect for five (5) calendar years after the effective date of this amendment unless further legislative action is taken to extend it. After such date, loan amounts are subject to the conditions set by subsection 18A-35(a)(5)(C) or may be set at a higher amount subject to Director approval.

(i) The loan amount must be at least $5,000 and not more than [20%] 30% of either the full cash value or the appraised value of the qualified property.

(ii) The loan amount, together with the outstanding balance of the mortgage or deed of trust, must be no more than 90% of either the full cash value or the appraised value of the qualified property.

(iii) The full cash value is determined by the Maryland State Department of Assessments and Taxation. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(B) For new commercial construction[:]. This subsection, 18A-35(a)(5)(B), shall be in effect for five (5) calendar years after the effective date of this amendment unless further legislative action is taken to extend it. After such date, loan amounts are subject to the conditions set by subsection 18A-35(a)(5)(D) or may be set at a higher amount subject to Director approval.

(i) If a qualified property is designed to meet or exceed the energy performance required by the County building code by no more than 5%, the maximum loan amount must not exceed [15%] 20% of the full cash value or appraised value of the qualified property.

(ii) If a qualified property is designed to exceed the energy performance required by the County building code by 5% or greater, the maximum loan amount must not exceed [20%] 30% of the full cash value or appraised value of the qualified property.

(iii) The loan amount, together with the outstanding balance of the mortgage or deed of trust, must be no more than 90% of either the full cash value or the appraised value of the qualified property.

(iv) The full cash value and appraised value of the property must be determined based on the estimated value of the property [if construction is] as completed. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(C) Existing commercial construction.

(i) The loan amount must be at least $5,000 and not more than 20% of either the full cash value or the appraised value of the qualified property.

(ii) The loan amount, together with the outstanding balance of the mortgage or deed of trust, must be no more than 90% of either the full cash value or the appraised value of the qualified property.

(iii) The full cash value is determined by the Maryland State Department of Assessments and Taxation. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(D) For new commercial construction.

(i) If a qualified property is designed to meet or exceed the energy performance required by the County building code by no more than 5%, the maximum loan amount must not exceed 15% of the full cash value or appraised value of the qualified property.

(ii) If a qualified property is designed to exceed the energy performance required by the County building code by 5% or greater, the maximum loan amount must not exceed 20% of the full cash value or appraised value of the qualified property.

(iii) The loan amount, together with the outstanding balance of the mortgage or deed of trust, must be no more than 90% of either the full cash value or the appraised value of the qualified property.

(iv) The full cash value and appraised value of the property must be determined based on the estimated value of the property as completed. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(b) *Property assessed clean energy surcharge*.

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

(2) A [surcharge] Surcharge must be imposed under a written agreement between the [County designated or] private lender and the County. The [surcharge] 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, liens, or water or sewer charges on the qualified property;

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

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

(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;

(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] Surcharge to cover charges relating to lending, program management, billing, or collection.

Sec. 18A-36. Payment of surcharge; lien.

(a) The County must collect the amount financed through a [surcharge] 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) 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] Surcharge to the property tax bill.

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

(d) The [surcharge] Surcharge and any accrued interest or penalty constitutes a first lien on the real property to which the [surcharge] Surcharge applies until paid. An unpaid [surcharge] Surcharge will be, until paid, a lien on the qualified property on which it is imposed from the date it becomes payable. he [surcharge] 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] 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.

Sec. 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] Surcharge billed and collected, and other relevant information pertaining to the prior calendar year.

LEGISLATIVE REQUEST REPORT

Bill 46-21
Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Amendments

DESCRIPTION: Bill 46-21 would:

(1) amend the County's C-PACE financing program to allow climate-related improvements for eligible projects;
(2) establish 12-month retroactive financing for eligible C-PACE measures;
(3) create a 5-year pilot for increased loan-to-value amounts for qualified properties;
(4) clarify new construction participation requirements;
(5) remove the County designated lender from the County's C-PACE program; and
(6) generally revise County law regarding environmental sustainability.

PROBLEM: The County's 2018 greenhouse gas inventory shows that commercial building energy use accounts for twenty-six percent of community-wide emissions. As stated in the County's Climate Action Plan, the unprecedented challenge of climate change will require innovative solutions, including resources to support funding to make buildings more energy-efficient, and thus improving operating costs and reducing greenhouse gas emissions.

OBJECTIVE: To align the County's C-PACE program, with the recently passed State enabling legislation (House Bill 517 - Clean Energy Loan Program – Remediation and Resiliency (2021)), that will expand and leverage financing opportunities for property owners to afford the upfront costs related to energy efficiency or renewable energy improvements for new and existing commercial buildings.

COORDINATION: Department of Environmental Protection and Department of Finance

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Office of Legislative Oversight

RACIAL EQUITY AND SOCIAL JUSTICE IMPACT: Office of Legislative Oversight

EVALUATION: N/A

EXPERIENCE ELSEWHERE: To be researched.

SOURCES OF INFORMATION: Ludeen McCartney-Green, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Applies only to County Council districts.

PENALTIES: N/A

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

M E M O R A N D U M

October 29, 2021

TO: Tom Hucker, President
Montgomery County Council

FROM: Marc Elrich, County Executive

SUBJECT: Introduction of Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

I am transmitting the attached legislation (XX-21, Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments) modifying the County's current C-PACE Financing program to reflect enhancements made in 2021 to the state-enabling law (Chapter 441) as well as additional program enhancements including:

- Allowing water efficiency, environmental remediation, and resiliency measures as eligible projects;
- permitting twelve-month retroactive financing for eligible C-PACE measures;
- introducing a five-year pilot for increased loan-to-value amounts for existing and newly constructed buildings;
- clarifying the new construction participation requirements to ensure projects that both meet and exceed building code up to 5 percent can access C-PACE financing;
- removing the County Designated Lender role from the County's C-PACE program, as the program has been established for seven years and this role is no longer necessary.

The County's C-PACE financing program was established in March 2015 and officially began in April 2016. Since then, thirteen projects totaling more than $10M have been financed by private capital funding for energy efficiency and renewable energy projects. In early 2021, the County selected the Montgomery County Green Bank as the new C-PACE Program Manager. As a result, property owners can now go to one organization for comprehensive financing options for building improvements.

I have attached a memorandum from Department of Environmental Protection (DEP) Director Adam Ortiz that provides more detailed information about the legislation.

If you have any questions, please contact David Crow in Finance at 240-777-8859 or David.Crow@montgomerycountymd.gov or Lindsey Shaw in DEP at 240-777-7754 or Lindsey.Shaw@montgomerycountymd.gov.

ME: ls

Enclosures: Memorandum from Adam Ortiz, the Director of Department of Environmental Protection

CC:

David Crow, Fiscal Projects Manager, Department of Finance
Lindsey Shaw, Manager, Department of Environmental Protection
Stan Edwards, Division Chief, Department of Environmental Protection
Adriana Hochberg, Office of the County Executive

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Marc Elrich
County Executive

Adam Ortiz
Director

M E M O R A N D U M

October 22, 2021

TO: Marc Elrich, County Executive

FROM: Adam Ortiz, Director
Department of Environmental Protection

SUBJECT: Introduction of Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

It is my pleasure to transmit the attached legislation (XX-21, Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments) modifying the County's current C-PACE Financing program to reflect enhancements made in 2021 to the state-enabling law (Chapter 441) as well as additional program enhancements including:

- Allowing water efficiency, environmental remediation, and resiliency measures as eligible projects;
- permitting twelve-month retroactive financing for eligible C-PACE measures;
- introducing a five-year pilot for increased loan-to-value amounts for existing and newly constructed buildings;
- clarifying the new construction participation requirements to ensure projects that both meet and exceed building code up to 5 percent can access C-PACE financing; and
- removing the County Designated Lender role from the County's C-PACE program, as the program has been established for six years and this role is no longer necessary.

The County's C-PACE financing program was established in March 2015 and officially opened its doors in April 2016. Since then, thirteen projects totaling more than $10M have been financed by private capital funding for energy efficiency and renewable energy projects. In early 2021, the County selected the Montgomery County Green Bank as the new C-PACE Program Manager. As a result, property owners can now go to one organization for comprehensive financing options for building improvements.

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MontgomeryCountyMD.gov/311 301-251-4850 TTY

The County's 2018 greenhouse gas inventory shows that commercial building energy use accounts for twenty-six percent of community-wide emissions.[1] As described in the County's Climate Action Plan,[2] the unprecedented challenge of climate change will require creative solutions, particularly in paying for climate action. The expansion of the C-PACE program as described below leverages this existing tool for private property owners to make their buildings more energy efficient, thus improving operating costs and reducing greenhouse gas emissions.

Additional Eligible Project Types: To align with the recent changes to the C-PACE state enabling legislation (HB 517) to allow for resiliency measures, the County proposes to amend C-PACE project eligibility to include broad categories. These include climate resiliency, climate adaptation, water conservation, environmental health and safety upgrades—and removing the prescriptive and limited list of measures that currently exist in the C-PACE law.

Climate resiliency is an important aspect of many C-PACE programs nationally, and resiliency is being heavily promoted at the Maryland state level. Climate resiliency is a strong risk mitigation tool. The risks associated with climate change are not only multiplying, but they are also disproportionately affecting more vulnerable populations. Montgomery County is not immune to extreme weather events exacerbated by climate change, and C-PACE can be a tool to effectively finance solutions rather than absorb the payout costs of insurance afterward. Additionally, broadening the eligible measures list provides flexibility to add measures relating to climate that do not fit in the current legislative definition of clean energy. It is important to set up the program to be responsive to the County's declared climate emergency, particularly climate resiliency.

Pilot Program for Higher Loan-to-Value Amounts: Bill XX-21 proposes a new five-year pilot program for larger project size eligibility for existing building and new construction projects:

- Existing Buildings: Increase the Loan-to-Value ratio from 20% to 30%
- New Construction Meeting or Exceeding Building Code up to 5%: Increase the Loan-to-Value ratio from 15% to 20%
- New Construction Exceeding Building Code by 5% or greater: Increase the Loan-to-Value ratio from 20% to 30%

The Debt-to-Value ratios remain unchanged from the current C-PACE allowance of debt carried by the property such that the property is not overleveraged. After the five-year pilot period, the C-PACE program would revert to the original loan-to-value ratios unless extended by the Director of Finance.

Nationally, PACE loan-to-value ratios fall within the range of 20% -35%. A comparison of other jurisdictions appears below:

Jurisdiction	Maximum C-PACE lien to value ratio
New York	35%
Delaware	No maximum
Washington, D.C.	35% (80% total LTV)
Arlington, VA	30%
MD-PACE (all MD except MC, PG, and Baltimore)	Capital provider determined
Baltimore	20%

[1] Montgomery County's GHG emissions inventory, 2018. https://www.montgomerycountymd.gov/green/climate/ghg-inventory.html
[2] Montgomery County's Climate Action Plan, 2021. https://www.montgomerycountymd.gov/climate

Increasing project values would be consistent with other markets and thus provide more ease for contractors and capital providers to navigate neighboring jurisdictions. Increasing project sizes can drive down average transaction costs and efforts for building owners and lenders. Moreover, increasing project values and allowing for additional sustainability building upgrades would be consistent with current climate goals for the County's private building stock.

Retroactive Financing: Also permitted by HB 517, retroactive financing has been allowed in the state of Maryland. Bill XX-21 amends the County's C-PACE law to permit retroactive financing. This allows building owners who have made eligible energy efficiency and renewable energy upgrades to access C-PACE program financing up to twelve months after the project is completed.

Retroactive financing is used in twelve other state programs with one-to-three-year lookback periods. In Maryland, retroactive C-PACE is available in the City of Baltimore and Prince George's County. A comparison of other jurisdictions appears below:

California - CSCDA	3 years, longer on case-by-case basis
California - WRCOG	3 years
New York (Energize)	30 months +
Pennsylvania (new program)	24 months
Michigan (Lean & Green)	3 years+
Florida (FRED)	3 years
Ohio (various programs)	3 years+
Kentucky (KY-PACE)	24 months
Utah (Utah PACE)	3 years
Rhode Island	3 years
Wisconsin (PACE Wisconsin)	30 months
Texas (Texas PACE Authority)	Not available
District of Columbia	case-by-case basis
Connecticut	One year
Cook County (Chicago) - *just released	Since 2017
Maryland	Baltimore project (Greenworks closed on January 2021). No timeframe specified.

Commercial entities face a variety of challenges in building maintenance, including emergency measures. When facing emergency maintenance/replacement issues, there is often not enough time to submit a C-PACE application ahead of time and wait for the County's standard ten-day application approval time. Retroactivity can also provide an economic recovery opportunity in response to COVID-19. Commercial and multi-family properties that have recently had qualifying energy work done may find themselves with cash preservation goals to cover working capital needs. Retroactive C-PACE allows property owners to replace more expensive debt with C-PACE's low-rate, long-term financing repaid through the property tax bill. Lastly, retroactive financing allows the C-PACE program to address equity barriers that can exist with financing programs, as described in the Climate Action Plan. If a commercial entity did not have the time/resources to investigate C-PACE at the time of an improvement, the opportunity to retroactively utilize C-PACE would provide a more efficient and equitable capital source

Clarification of New Construction Program Participation: Presently, the County legislation section on new construction eligibility refers exclusively to exceeding code. The proposed amendments also provide for properties that meet the relevant building code to access C-PACE financing.

Existing buildings can already use C-PACE to improve current conditions to code and achieve energy savings. Thus, offering this for new construction would be the equivalent of what is already offered for existing buildings. Developers of new construction can obtain a lower weighted average cost of capital using C-PACE than alternative commercial sources. As the County implements the 2018 International Green Construction Code, access to C-PACE to meet this sustainability overlay code will be a valuable incentive for developers in Montgomery County.

Removal of County Designated Lender: To assist with the initial development of the C-PACE program, the County established a County Designated Lender role to serve alongside the Program Manager role to provide building owners with straightforward and County-contracted access to capital. This was intended to build a strong pipeline of projects and give building owners access to a lender experienced with C-PACE financing. In practice, the presence of a County Designated Lender created confusion with the open-lending C-PACE model we intended to create. However, with the County's C-PACE program in its sixth year, the role of County Designated Lender is no longer needed now that the Montgomery County Green Bank is the C-PACE Program Manager. The Green Bank brings established and trusted relationships with local lenders willing and able to lend private capital in the County's open-market C-PACE program.

These changes are likely to increase C-PACE deal flow, and as a result, improve climate outcomes for the County. As with any effort to increase private capital deployment, a greater number of projects raises the potential of defaults. C-PACE, however, has certain built-in risk mitigation aspects, including senior lender consents, Capital Provider underwriting standards, non-acceleration, and individual project approvals, contributing to its strength in outperforming commercial finance defaults.

This legislation is strongly supported by the County's Climate Change Officer and the Departments of Environmental Protection (DEP) and Finance (FIN), primarily because these amendments provide a cost-effective approach to meeting our ambitious climate goals. This legislation has also been reviewed by the County Attorney for form and legality.

DEP requests that these amendment to the C-PACE Financing program are transmitted to the County Council on behalf of the County Executive.

If you have any questions, please contact David Crow in Finance at 240-777-8859 or David.Crow@montgomerycountymd.gov or Lindsey Shaw in DEP at 240-777-7754 or Lindsey.Shaw@montgomerycountymd.gov.

Fiscal Impact Statement
Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

1. **Legislative Summary.**

   Bill XX-21 updates the County's Commercial Property Assessed Clean Energy (C-PACE) financing program to reflect the changes made to the state-enabling legislation (HB 517 of 2021). The Bill allows for 12-month retroactive financing for eligible C-PACE measures; introduces a 5-year pilot for increased loan-to-value amounts for existing and newly constructed buildings; clarifies new construction participation requirements to ensure projects that both meet and exceed code up to 5 percent can access C-PACE financing; and removes the County Designated Lender role from the County's C-PACE program.

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.**

   This bill is not expected to have an impact on County revenues or expenditures.

   Implementation of the legislation will be performed by the new Program Manager at the Montgomery County Green Bank and will thus not directly impact the County government's budget. Capital funding for C-PACE projects comes from the private sector.

   C-PACE projects may result in buildings with a higher assessed value, which may positively impact tax receipts, but this impact cannot be reliably estimated at this time.

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

   See the response to Question #2.

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

   Non applicable.

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

   The bill is not expected to impact County IT or ERP systems.

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

   Future spending is not authorized under the bill.

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

   Staff time needed to implement the Bill is dependent upon the number of C-PACE applications received as a result of these program changes. However, it is expected that the existing staff in the Departments of Finance and Environmental Protection will continue to oversee the C-PACE program and incoming applications.

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

   Implementation of the bill is not expected to materially impact staff responsibilities.

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

   No additional appropriations would be required to implement the bill.

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

    The bill is not expected to have an impact on County revenues or expenditures.

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.**

    County staff that oversees the C-PACE program will continue to do so. Capital funding for C-PACE projects comes from the private sector.

13. **Other fiscal impacts or comments.**

    The expansion of the C-PACE program provides a tool for private property owners to make their buildings more energy efficient, thus improving building operating costs and reducing greenhouse gas emissions. Because implementation of this bill does not require additional County resources, this is a very cost-effective strategy to help the County meet its ambitious climate goals.

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

David Crow, Department of Finance
Stan Edwards, Department of Environmental Protection
Lindsey Shaw, Department of Environmental Protection
Lindsay Lucas, Office of Management and Budget

9/21/21

Jennifer Bryant, Director
Office of Management and Budget

Date

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 46-21: ENVIRONMENTAL SUSTAINABILITY — COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM — AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 46-21 could widen economic inequities by race and ethnicity but could also narrow health inequities by race and ethnicity. Since the anticipated economic benefit of this bill for White residents is more direct than the anticipated health benefit for residents of color, OLO finds that Bill 46-21 has a minor negative impact on racial equity and social justice (RESJ) in the County. To improve the RESJ impact of Bill 46-21, this statement offers several recommended amendments for Council consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of racial equity and social justice (RESJ) impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.[1] Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.[2]

PURPOSE OF BILL 46-21

Greenhouse gas emissions are a significant driver of climate change. In 2018, greenhouse gas emissions from commercial and residential buildings accounted for half of all emissions in the County.[3] To encourage commercial building owners to reduce their greenhouse gas emissions, the Commercial-Property Assessed Clean Energy (C-PACE) program provides financing that is repaid as a property tax surcharge for the following energy upgrades:[4]

- Installation, storm windows or doors, caulking, weather-stripping and sealing;
- Automated energy control systems or heating, ventilation, or air conditioning systems;
- Light fixtures and systems, energy recovery systems and day lighting systems;
- Electrical wiring, outlets or other installations or modifications that decrease energy consumption;
- Measures that increase water efficiency or expand renewable energy sources; and
- Renewable energy systems or fixtures that generate electricity.

Bill 46-21 would amend the C-PACE program to replace the list of eligible upgrades with climate related improvements that address renewable energy, energy and water efficiency, environmental remediation, grid resilience, or property resilience.[5] The bill would allow property owners to retroactively finance C-PACE eligible measures purchased over the past 12 months and clarify new construction participation requirements.[6] Further, the bill would create a five-year pilot that would allow loans to increase from 20 percent up to 30 percent of the value of a commercial property.[7] Bill 46-21 would create a C-PACE loan product that stays with the property and establishes the County's Green Bank as the County's designated C-PACE lender.[8] Bill 46-21 was introduced to the Council on November 30, 2021.[9]

ECONOMIC OPPORTUNITY, THE CLIMATE GAP, AND RACIAL EQUITY

Understanding the impact of Bill 46-21 on racial equity and social justice requires understanding the historical context that shapes economic opportunities and the climate gap – the disproportionate and unequal impact that global warming has on people of color and low-income communities. To describe this context, this section describes the drivers of and data on racial inequities in economic opportunity and climate change impact.

Inequities in Economic Opportunity. Historically inequitable policies have fostered racial and ethnic inequities in economic development among business owners and employees. As noted by the Federal Reserve Bank of Boston:[10]

> *"(T)he practices and policies that laid the groundwork for and built the U.S. were explicitly designed to ensure an absolute accumulation of intergenerational wealth and concentrated power for white people, particularly men. A legacy of land theft, slavery, racial segregation, disenfranchisement, and other exclusive policies against Black and Indigenous people and people of color produced a racialized economy that decimated these communities and intentionally barred survivors and descendants from building wealth, socioeconomic well-being and resilience."*

Inequities in economic opportunity have created sizable disparities in business ownership by race and ethnicity. Nationally, Black and Latinx residents represent about 28 percent of the population, but only eight percent of the nation's business owners with employees.[11] Locally, Black and Latinx firms each accounted for 15 percent of firms in 2012 and Asian firms accounted for 14 percent of firms, yet Asian firms accounted for only four percent of business revenue, Black and Latinx firms each accounted for less than two percent of business revenue.[12] Economic inequities also foster racial and ethnic disparities in property ownership as 75 percent of White and Asian households resided in owner-occupied units in Montgomery County in 2019 compared to 50 percent of Latinx and Native American households and 42 percent of Black households.[13]

Inequities in Climate Change. The policies and practices that fostered gaps in economic opportunity have fostered gaps in housing opportunities that have placed BIPOC communities at greater risk for health disparities. More specifically:

- Redlining, racial covenants, exclusionary zoning, the Federal Housing Administration, the Social Security Act, GI Bill, and Departments of Transportation policies and practices have fostered **housing segregation** by race and ethnicity that have undermined wealth building and housing equity for Black, Indigenous, and other people of color (BIPOC) residents.[14] Housing segregation has also fostered the concentration of BIPOC residents into densely populated neighborhoods with fewer trees and larger amounts of impervious surfaces that make them more vulnerable to effects of excessive heat and flood events exacerbated by climate change.[15]

- Inequities in housing, income, employment and health has fostered **"the climate gap**" - the unequal impact that climate change has on BIPOC and low-income communities due to their higher risk of experiencing the consequences of climate change combined with a lack of resources to adjust to the consequences of climate change.[16] The heightened risk for experiencing the negative consequences of climate change and the diminished ability to adjust to climate change means that BIPOC and low-income communities will suffer more during heat waves with increased illness and deaths, will breathe even dirtier air due to global warming, will pay more for basic necessities, and may have fewer job opportunities with increased climate change.[17]

- The locating of BIPOC and low-income communities near polluting and environmentally hazardous industries[18] foster **health inequities and disparities** that manifest as higher rates of cancer, lung conditions, heart attacks, asthma, low birth weights, and high blood pressure.[19] The County's Climate Action Plan, for example, show that communities with high concentrations of BIPOC and low-income residents are located in areas of the County with higher levels of traffic and air pollution.[20] Local data also show that Black residents had the highest rates of emergency room visits for chronic lower respiratory diseases at more than 1,538 visits per 100,000 followed by Latinx residents at 815 visits per 100,000 compared to 543 visits per 100,000 White residents. [21]

ANTICIPATED RESJ IMPACTS

Considering the anticipated racial equity and social justice impact of Bill 46-21 requires considering the impact of the bill on four sets of stakeholders: commercial property owners, clean energy business owners and employees, commercial property renters, and County residents at large. OLO's analysis of the anticipated impact of Bill 46-21 on each stakeholder group and their respective demographics to understand the anticipated RESJ impact of this bill follows.

- **Commercial Property Owners – Primary/Direct Beneficiaries.** The C-PACE program primarily serves property owners as it provides them financing to increase the energy efficiency of their buildings. Data on homeownership suggests that commercial property owners in Montgomery County are disproportionately White and in turn will disproportionately benefit from the amendments proposed to the C-PACE program. These benefits include access to subsidized loans that improve their building's efficiency and property values that in turn potentially increase commercial property owner's long-term wealth.

- **Clean Energy Business Owners and Employees – Primary/Direct Beneficiaries.** Contracting opportunities for business owners to retrofit existing buildings with cleaner energy systems will increase under Bill 46-21. Data on business ownership and revenue suggests the businesses benefiting from increased C-PACE investments in Montgomery County are also disproportionately White. However, additional data is needed to discern the demographics of workers most likely to benefit from additional C-PACE subsidized investments.

- **Commercial Renters – Secondary/Indirect Beneficiaries**. Increased energy efficiency for commercial building owners that make energy investments with C-PACE financing could reduce energy use and costs among commercial renters. Alternatively, these energy saving benefits to commercial renters could be offset by increased rents that offset commercial building owners' increased costs for C-PACE financed energy upgrades via the property tax surcharge. Data on business owners suggest that commercial renters are mostly White.

- **County Residents at Large – Secondary/Indirect Beneficiaries.** If Bill 46-21 works as intended and spurs building owners to invest in cleaner energies, all residents will benefit from reductions in greenhouse emissions. Further, BIPOC residents and communities may disproportionately benefit from reductions in greenhouse emissions since they are more vulnerable to the negative consequences of climate change. A reduction in greenhouse gases could in turn narrow some of the health disparities that BIPOC residents experience.

Overall, OLO finds that Bill 46-21 primarily delivers economic benefits to commercial property and business owners that are disproportionately White while offering secondary benefits to County residents that may narrow health inequities by race and ethnicity. As such, OLO anticipates that Bill 46-21 could widen economic inequities but narrow health inequities. Since the economic impact of this bill on property and business owners is more direct than the health impact on County residents, OLO finds that Bill 46-21 has a minor negative impact on RESJ in the County.

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[22] OLO finds that Bill 46-21 has a minor negative impact on racial equity and social justice in the County as the economic benefits it derives mainly for White residents may exceed the health benefits that could derive for residents of color. Should the Council seek to improve the racial equity and social justice impact of Bill 46-21, the following recommended amendments and practices could be considered.

- **Target C-PACE investments in neighborhoods with the worst air and greenhouse gas emissions.**[23] Currently any commercial building owner is eligible for C-PACE financing. To align C-PACE financed investments with community needs, the County could amend the C-PACE law to offer Bill 46-21's retroactive financing and five-year pilot provisions to commercial properties in vulnerable neighborhoods. Towards this end, researchers recommend using mapping to identify vulnerable neighborhoods, measuring the success of mitigation strategies by whether they protect everyone, and designing research that identifies opportunities for targeting greenhouse gas reductions to reduce toxic air emissions in highly polluted neighborhoods.[24]

- **Create a C-PACE set aside for Equity Emphasis Areas.** Equity Emphasis Areas, neighborhoods in the County with high concentrations of poverty and racially and linguistically diverse residents, account for 26 percent of the County's population.[25] To ensure all communities in the County equitably benefit from C-PACE financed energy improvements, the Council could consider encouraging the County's Green Bank to set aside a certain percentage of C-PACE financing to commercial buildings or making some of the key provisions of Bill 46-21 (e.g. retroactive financing) exclusive to commercial buildings in Equity Emphasis Areas.

- **Require the Green Bank to encourage commercial property owners to partner with Minority Business Enterprises for C-PACE investments.** The economic benefits of Bill 46-21 are significant and to the extent possible, should be used to reduce racial inequities in business ownership rather than widen them. Encouraging commercial property owners to seek out minority-owned businesses to deliver services and partnering with minority vendors and business associations toward this end could foster equitable economic development that benefits a broader set of business interests in the County by race and ethnicity.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Dr. Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ impact statement.

[1] Definition of racial equity and social justice adopted from "Applying a Racial Equity Lends into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools https://www.racialequitytools.org/glossary
[2] Ibid

[3] Montgomery County Climate Action Plan, June 2021
[4] Article 5. Commercial Property Assessed Clean Energy Program https://www.montgomerycountymd.gov/BONDS/Resources/Files/C-PACE%20Law.pdf
[5] Montgomery County Council, Bill 46-21, Environmental Sustainability – Commercial Property Assessed Clean Energy Program - Amendments
[6] Ibid
[7] Ibid
[8] Ibid
[9] Ibid
[10] Field Note, 2020-2, December 2020 – Turning the Floodlights on the Root Causes of Today's Racialized Economic Disparities: Community Development Work at the Boston Fed Post-2020, Regional and Community Outreach
[11] Joseph Parilla and Darin Redus, How a new Minority Business Accelerator grant program can close the racial entrepreneurship gap. Brookings, December 9, 2020
[12] Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019
[13] Calculations based on American Community Survey, 2019 1-Year Estimates, Table ID S2502.
[14] Kilolo Kijakazi, et al, The Color of Wealth in the Nation's Capital, November 2016 https://www.urban.org/research/publication/color-wealth-nations-capital
[15] Iverson, L.R. and E.A. Cook, Urban Forest Cover of the Chicago Region and Its Relation to Household Density and Income, Urban Ecosystems, 2000 cited in Zero Cities Project, Equity Assessment Tool and Rolf Pendall, A Building Block for Inclusive Housing for Community Level Diversity, Participation and Cohesion, Urban Institute, September 2017 cited in Zero Cities Project, Equity Assessment Tool https://www.usdn.org/uploads/cms/documents/equity_assessment_tool_-zero_cities_project_-_race_forward_2019.pdf
[16] Rachel Morello-Frosch, et al, The Climate Gap: Inequities in How Climate Change Hurts Americans and How to Close the Gap, Dornsife Center, University of Southern California, 2009
[17] Ibid
[18] Iverson, L.R. and E.A. Cook, Urban Forest Cover of the Chicago Region and Its Relation to Household Density and Income, Urban Ecosystems, 2000 cited in Zero Cities Project, Equity Assessment Tool and Rolf Pendall, A Building Block for Inclusive Housing for Community Level Diversity, Participation and Cohesion, Urban Institute, September 2017 cited in Zero Cities Project, Equity Assessment Tool https://www.usdn.org/uploads/cms/documents/equity_assessment_tool_-zero_cities_project_-_race_forward_2019.pdf
[19] Rolf Pendall and American Public Health Association, Climate Change, Health, and Equity: A Guide for Local Health Departments, https://www.apha.org/-/media/Files/PDF/topics/climate/Guide_Section2.ashx
[20] Montgomery County Climate Action Plan
[21] Health in Montgomery County, 2008 – 2016: A surveillance report on population health, https://www.montgomerycountymd.gov/HHS/Resources/Files/Reports/PopHealthReportFINAL.pdf
[22] Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established
[23] Recommendation consistent with Montgomery County Climate Action Plan goal to prioritize people and communities that are the most vulnerable and most sensitive to the impact of climate change.
[24] Rachel Morello-Frosch, et al.
[25] Montgomery Planning, The Equity Focus Area Analysis

Economic Impact Statement

Office of Legislative Oversight

Bill 46-21 Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 46-21 would have a positive impact on economic conditions in the County. By broadening the scope of the County's Commercial Property Assessed Clean Energy (C-PACE) Program in terms of project type, financing flexibility, and lender eligibility, the Bill likely would increase private sector capital investment in commercial buildings in the County. The magnitude of the impacts could range from minimal to significant, depending on the number of commercial property owners and private lenders that take advantage of the changes to the C-PACE Program.

BACKGROUND

C-PACE Program

In its 2017 Climate Action Resolution, the Council committed to reducing greenhouse gas emissions (GGEs) 80% by 2027 and 100% by 2035.[1] Buildings in the County are a primary source of GGEs, with heating, cooling, and lighting buildings accounting for 41% of GGEs.[2] The County's Climate Action Plan set a target of electrifying or using carbon-free energy sources for all new and existing buildings by 2035.[3]

Consistent with this target, the C-PACE Program aims to make energy efficiency and renewable energy improvements to commercial buildings more affordable. To achieve this aim, the Program helps qualified properties access "lower-cost, long-term flexible financing for up to 100 percent of clean energy property improvements to be repaid as a surcharge on the property tax for up to 20 years."[4] According to the Montgomery County Green Bank's website, the Program helps owners attain the following benefits:

- "100% up-front funding for the energy savings and renewable energy portions of retrofits, and up to 20% of total eligible construction costs on new construction developments";
- long payback periods in which the terms "generally match the weighted-average useful life of equipment: 15-20 year terms are common";

[1] Montgomery County Council, Resolution No. 18-974.
[2] Montgomerycountymd.gov, About Montgomery County's Green Buildings.
[3] Montgomery County Climate Action Plan.
[4] Montgomerycountymd.gov, Commercial PACE Financing.

- permit the incorporation of tax credits, grants, and other incentives to improve the project economics; and
- the tax obligation transfers with the sale of property.[5]

The C-PACE Program was established in 2015. According to the Program's 2021 Annual Report,[6] it has achieved the following outcomes:

- 13 projects have been approved, in which the total C-PACE financed amount is $10,038,531 and the anticipated annual energy savings is 11,812 MMBtu/year.
- The overall price per 1 MMBtu/year of anticipated energy savings is approximately $850.
- The median amount of financing per project is $551,581, with a median anticipated energy savings of 740 MMBtu/year.
- In terms of building type, retrofitting multi-family buildings has made up most projects (9 out of 13) and received the largest shares of total financing (44%) and total anticipated energy savings (51%).
- In terms of geography, retrofitting buildings in Bethesda has made up most projects (7 out of 13) and received the largest shares of total financing (37%) and total anticipated energy savings (44%).

See **Tables 1** and **2** in the **Appendix**.

Bill Description

Currently, the County's C-PACE Program does not align with recently passed State enabling legislation, House Bill 517 - Clean Energy Loan Program – Remediation and Resiliency (2021).[7] If enacted, Bill 46-21 would align the Program with State law and in doing so make programmatic changes which broaden the Program's scope in terms of project type, financing flexibility, and lender eligibility:

- **Project Type:** broaden the scope of eligible projects from energy improvements to "Climate Related Improvements," which would include renewable energy, energy and water efficiency, environmental remediation, grid resilience, or property resilience*;*
- **Financing Flexibility:** establish 12-month retroactive financing for eligible C-PACE improvements; and create a 5-year pilot for increased loan-to-value amounts for qualified properties;
- **Lender Eligibility:** remove the County designated lender from the County's C-PACE program.[8]

In addition, the Bill would clarify new construction participation requirements.

[5] Mcgreenbank.org, C-PACE Property Owners and MC-PACE.
[6] Montgomery County Government, 2021 Annual Report on the County's Commercial Property Assessed Clean Energy Program.
[7] Ludeen McCartney-Green to County Council, Memorandum, November 24, 2021.
[8] Montgomery County Council, Bill 46-21.

Primary Economic Stakeholders

The economic impacts from enacting Bill 46-21 largely would occur through the programmatic changes resulting in an *investment effect*—that is, increase in commercial property improvements using C-PACE financing which otherwise would not occur in the absence of enacting the Bill. If an investment effect occurs, the following businesses and residents would be the primary entities economically impacted by the changes in law:

- **commercial property owners and tenants** in commercial buildings where Climate Related Improvements occur;
- **private lenders** in the County that provide C-PACE financing; and
- **clean energy service providers and other contractors** based in the County involved in Climate Related Improvements in affected buildings.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess Bill 46-21's impacts on County-based private organizations and residents in terms of the Council's priority economic indicators.[9] In subsequent sections of this statement, OLO focuses on the Bill's potential impacts on *private sector capital investment* in commercial buildings in relation to the primary economic stakeholders previously identified. Excluded from this analysis is the Bill's potential secondary and indirect impacts on private organizations and residents.[10]

To assess Bill 46-21's impact on private sector capital investment, OLO performs a qualitative assessment of the investment effect that the changes in law would likely induce. The qualitative assessment is based on reports and data related to the County's C-PACE Program as well as correspondence with personnel from the Green Bank and the Department of Environmental Protection, and a representative from an energy efficiency contractor.

VARIABLES

The primary variables that would affect the economic impacts of enacting Bill 46-21 are the following:

- total annual increase in private investment in Climate Related Improvements to commercial buildings in the County;
- percentage of local lenders, energy service providers, etc. involved in these investments; and
- percentage of investments used to import clean energy technology

[9] Montgomery County Code, Sec. 2-81B.
[10] For example, it is likely that Climate Related Improvements in commercial buildings would improve conditions for workers, thereby increasing productivity. See the COGfx studies conducted by researchers at the Harvard T.H. Chan School of Public Health's Center for Health and the Global Environment (CHGE) and SUNY Upstate Medical

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that enacting Bill 46-21 would have positive impacts on private organizations in the County in terms of several of the Council's priority indicators.

OLO expects the Bill to increase private sector capital investment for Climate Related Improvements to commercial buildings in the County that otherwise would not occur. This *investment effect* would occur through:

- attracting private investment to eligible improvements that otherwise would not have flowed to the County; and
- re-directing investments towards eligible improvements that otherwise would have flowed to other areas within the County.

Broadening the scope of the C-PACE Program in terms of project type, financing flexibility, and lender eligibility likely would provide commercial property owners more opportunities to take advantage of C-PACE financing for capital improvements.

As previously discussed, the C-PACE Program can offer property owners more attractive loan terms than traditional financing, such as 100% up-front financing, 20-year loan terms, and lower interest rates. The mechanism behind these features is the following: Because the loan is secured as a surcharge on the owner's property tax bill, the C-PACE Program can provide for a priority lien over all other debt. The seniority lien and higher certainty of payment allows private lenders to offer higher financing amounts, longer terms, and lower interest rates.[11]

Broadening the scope of the Program should increase the supply and demand of C-PACE financing in the following ways:

- **Project Type:** Changing the eligible projects from energy improvements to Climate Related Improvements would expand the type of capital improvements that property owners can receive C-PACE financing for.
- **Financing Flexibility:** Offering *retroactive financing* likely would provide opportunities for C-PACE financing for improvements in cases where owners are unable to go through the application process due to time constraints associated with emergency maintenance, lack of familiarity with the application process, and other obstacles. Retroactive financing likely would be most helpful for small property owners with staff and resource constraints. In addition, increasing the *loan-to-value amounts* for qualified properties through the 5-year pilot likely would increase the supply of financing for owners to use C-PACE financing for larger capital improvements than would be possible under the current loan-to-value amounts.
- **Lender Eligibility:** Removing the County designated lender from the County's C-PACE program may increase the number of private lenders involved in financing Climate Related Improvements through the C-PACE Program. A

[11] OLO correspondence with Green Bank leadership.

more competitive market may increase the total supply of financing for Climate Related Improvements and offer more variation in loan terms, thereby potentially increasing property owner interest in pursuing C-PACE financing.

The magnitude of the Bill's impact on private sector capital investment could range from minimal to significant. Its magnitude would largely depend on the number of property owners and private lenders that take advantage of the changes to the C-PACE program.

As previously stated, OLO limits the scope of this analysis to Bill 46-21's investment effect due to data and time limitations. However, OLO notes here the potential for the Bill to positively affect private organizations in terms of the following priority indicators. First, County-based clean energy service providers that perform services related to Climate Related Improvements in affected buildings likely would experience business income gains. Second, improving commercial buildings in terms of renewable energy, energy and water efficiency, environmental remediation, grid resilience, and property resilience may reduce net operating expenses associated with utilities as well as damage and disruptions caused by extreme weather events. Net savings likely would increase over time as climate change risks to the County worsen.[12] Finally, given the magnitude of the induced private sector investment, the Bill has the potential to improve the County's competitiveness in the clean energy market and have positive economic development impacts.

Residents

As previously stated, data and time limitations prevent OLO from analyzing Bill 46-21's potential impacts on residents in terms of the Council's priority economic indicators.

DISCUSSION ITEMS

Not applicable

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Montgomery County Council. Bill 46-21, Environmental Sustainability – Commercial Property Assessed Clean Energy Program – Amendments. Introduced on November 30, 2021.

[12] Bryant and Simmons, Measuring Climate Resilience.

Montgomery County Council. Resolution 19-300. Economic Development Platform for Montgomery County. Adopted on November 19, 2019.

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CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

APPENDIX

Table 1. Accepted C-PACE Projects in Montgomery County Maryland

Building Name	Property Type	City	C-PACE Financed Amount	Anticipated Annual Energy Savings (MMBtu/year)	Loan Term	Project Completion Date	Loan Pay-off Date
Shady Grove Professional Building / Comfort Inn Shady Grove	Hotel/Office	Gaithersburg	$1,436,019	1,624	20 years	3/10/2017	5/7/2020
The Glens on Battery Lane	Multi-family	Bethesda	$500,685	577	20 years	11/28/2017	-
The Middlebrooke Apartments	Multi-family	Bethesda	$635,422	874	20 years	11/28/2017	1/31/2020
The Glens on Battery Lane	Multi-family	Bethesda	$551,581	567	20 years	2/15/2018	-
Wellington Apartments	Multi-family	Chevy Chase	$290,181	152	20 years	2/15/2018	-
Glen Brook Apartments	Multi-family	Bethesda	$402,546	219	20 years	2/15/2018	-
Glenmont Apartments	Multi-family	Bethesda	$421,095	249	20 years	2/15/2018	-
The Drake	Multi-family	Chevy Chase	$537,337	896	20 years	2/15/2018	-
Wildwood Medical Center	Office	Bethesda	$638,849	961	20 years	2/21/2018	-
Bradley/ Strathmore Apartments	Multi-family	Chevy Chase	$481,710	740	20 years	4/9/2018	-
Exchange Place	Office	Rockville	$1,974,843	2,719	20 years	7/31/2018	5/15/2020
The Dorset	Multi-family	Bethesda	$556,364	1,719	20 years	9/17/2018	-
Best Western Plus Rockville Hotel & Suites	Hotel	Rockville	$1,611,899	515	20 years	TBD	-

Source: Montgomery County Government, 2021 Annual Report on the County's Commercial Property Assessed Clean Energy Program

Table 2. C-PACE Financed Amount and Annual Energy Savings by Project Category

Project Category	Number of Approved Projects	C-PACE Financed Amount					Anticipated Annual Energy Savings (MMBtu/year)					Price Per 1 MMBtu/Year (rounded)
		Total	Average	Median	Min	Max	Total	Average	Median	Min	Max	
All	**13**	**$10,038,531**	**$772,195**	**$551,581**	**$290,181**	**$1,974,843**	**11,812**	**909**	**740**	**152**	**2,719**	**$850**
Bethesda	7	$3,706,542	$529,506	$551,581	$402,546	$638,849	5,166	738	577	219	1,719	$717
Chevy Chase	3	$1,309,228	$436,409	$481,710	$290,181	$537,337	1788	596	740	152	896	$732
Gaithersburg	1	$1,436,019					1,624					$884
Rockville	2	$3,586,742	$1,793,371	$1,793,371	$1,611,899	$1,974,843	3,234	1,617	1,617	515	2,719	$1,109
Hotel	1	$1,611,899					515					$3,130
Hotel/Office	1	$1,436,019					1,624					$884
Multi-family	9	$4,376,921	$486,325	$500,685	$290,181	$635,422	5,993	666	577	152	1,719	$730
Office	2	$2,613,692	$1,306,846	$1,306,846	$638,849	$1,974,843	3,680	1,840	1,840	961	2,719	$710

Source: Montgomery County Government, 2021 Annual Report on the County's Commercial Property Assessed Clean Energy Program

TESTIMONY BY ADRIANA HOCHBERG, ON BEHALF OF COUNTY EXECUTIVE MARC ELRICH

on Bill 46-21, Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

January 11, 2022

My name is Adriana Hochberg, Acting Director of the Department of Environmental Protection and the County's Climate Change Officer. Thank you for the opportunity to testify on behalf of the County Executive on Bill 46-21, which further amends the Commercial Property Assessed Clean Energy (C-PACE) Financing program, jointly managed by DEP and the Department of Finance, and administered by the Montgomery County Green Bank.

The County Executive strongly supports passing Bill 46-21 so the County can begin offering expanded C-PACE opportunities for commercial property owners.

As highlighted in the Paying for Climate Action Implementation section of the Climate Action Plan released in June 2021, C-PACE is a critical tool for building owners to make their buildings more energy efficient, reduce operating costs, and reduce greenhouse gas emissions. These amendments expand the access and scope of this existing financial tool in our toolbelt to achieve our climate goals and improve the resiliency of properties in the county.

Specifically, Bill 46-21 amends the C-PACE program to reflect enhancements made to the state enabling law in 2021 and adds clarifications to the County's C-PACE law. The primary enhancements expand the scope of allowable projects to include water conservation, health and safety upgrades, and climate adaptation and resiliency measures. The amendments also permit twelve-month retroactive financing for eligible measures, introduce a five-year pilot for higher loan amounts relative to the value of the building for existing and new construction, and make other minor, clarifying changes so the program is easier for building owners to use.

C-PACE has been an important tool for the County's climate efforts and allows commercial property owners to access funding for their own efforts. Since the County opened the C-PACE program in April 2016, more than $10M in projects have been financed by private capital funding for energy efficiency and renewable energy projects. Further leveraging these existing opportunities enables property owners to meet the 2018 International Green Construction Code requirements, as well as the proposed Building Energy Performance Standards that the County Executive sent to the Council in April 2021.

I am excited for the passage of Bill 46-21 and the prospect it gives private property owners to improve their buildings, reduce their emissions, and prepare for the challenges associated with climate change.

Montgomery County
GreenBank
Your partner for clean energy ™

Montgomery County Council Bill 46-21
Environmental Sustainability –
Commercial Property Assessed Clean Energy Program
January 11, 2022

Testimony of Stephen Morel, Chief Investment Officer
Montgomery County Green Bank

At the start of 2021, the Montgomery County Green Bank (the "Green Bank") became the County's designated Program Manager of the Commercial Property Assessed Clean Energy ("C-PACE") program. As the Program Manager, the Green Bank works in conjunction with the County's Department of Environmental Protection ("DEP") and Finance Department ("FINANCE") to provide:

(i) Marketing and promotion of the C-PACE Program;
(ii) C-PACE finance application approval;
(iii) Portfolio servicing of C-PACE financing; and
(iv) C-PACE Program reporting.

As the County's green bank dedicated to catalyzing climate finance and in our role as the C-PACE Program Manager, we are enthusiastic about the opportunity for Bill 46-21 to situate C-PACE as a broader, more effective tool to support climate-related improvements and reach the County's climate goals. The Bill will delivery strong results by deepening the incentive structure to make property investments greener. Specifically, it reduces friction across key structural items that have limited the full potential a C-PACE program can offer in delivering a ***substantial climate benefit***. Bill 46-21 will lead to a great outcome for the County and further demonstrate national climate leadership.

Realizing C-PACE Program Benefits

Montgomery County was an early leader in the C-PACE market. As the County's climate priorities have developed and the C-PACE market has advanced, we believe that it has become time to advance the features of the C-PACE program. Bill 46-21 will successfully achieve that advancement and help the C-PACE program achieve its fullest potential by:

1. Supporting implementation of County climate priorities using commercial capital instead of limited public funds.

2. Offering property owners and developers a financing strategy with incentives to go green that are not available through traditional commercial lending.[1]

[1] The C-PACE assessment allows a capital provider to take a super senior position in the capital stack. Not only is it important that property owners often are more inclined to pay taxes ahead of other debts or arrears, but the super senior position also ensures repayment capacity several times over. As a result, capital providers are able to offer longer term

3. Being a critical tool for any Building Energy Performance Standards ("BEPS") that may get adopted.

4. Promoting economic development pandemic recovery as properties address resiliency and health improvements in consideration of current and future occupants.

5. Promoting sector growth including jobs and investment with energy performance contractors and related commercial real estate industries.

To recognize these benefits and better align a climate forward incentive structure into the County's commercial market, Bill 46-21 achieves key enhancements: (i) larger projects with a deeper climate impact, (ii) an improvement of the operating strength of properties, particularly in the face of emergency measures, and (iii) an aligning of C-PACE with climate resiliency.

1. Lien-To-Value. One of the key changes in Bill 46-21 is an increase in the ratio of the C-PACE financed amount to property value of 20% to up to 30%. This increase serves to grow access to C-PACE financing. If, for example, a property value is $100, the new LTV allows for $30 worth of climate investments instead of the current level of $20.

Nationally, PACE LTV ratios are within the range of 20% - 35%. Capital providers gravitate to jurisdictions with larger LTVs because it provides them more to offer customers. Capital providers are, on the other hand, reluctant to operate in jurisdictions with lower LTVs because other transaction costs limit the interest in a lesser benefit. Moving to a 30% maximum LTV moves Montgomery County in line with where jurisdictions are moving to yield a climate aligned incentive structure in a prudent manner.[2]

A greater LTV helps with two types of property activities: retrofits and new construction.

Retrofits: Building energy efficiency can be weighted downward cyclically in that poor performing buildings require larger projects and thus more financial resources to attain the same level as a building with a higher performance baseline. Over time, the financial burden becomes greater, and the disparity increases. Increasing C-PACE LTV ratios allows for an ***equitable approach*** to help certain property owners with ***larger project needs***. Looking ahead, such properties may also require such investments to

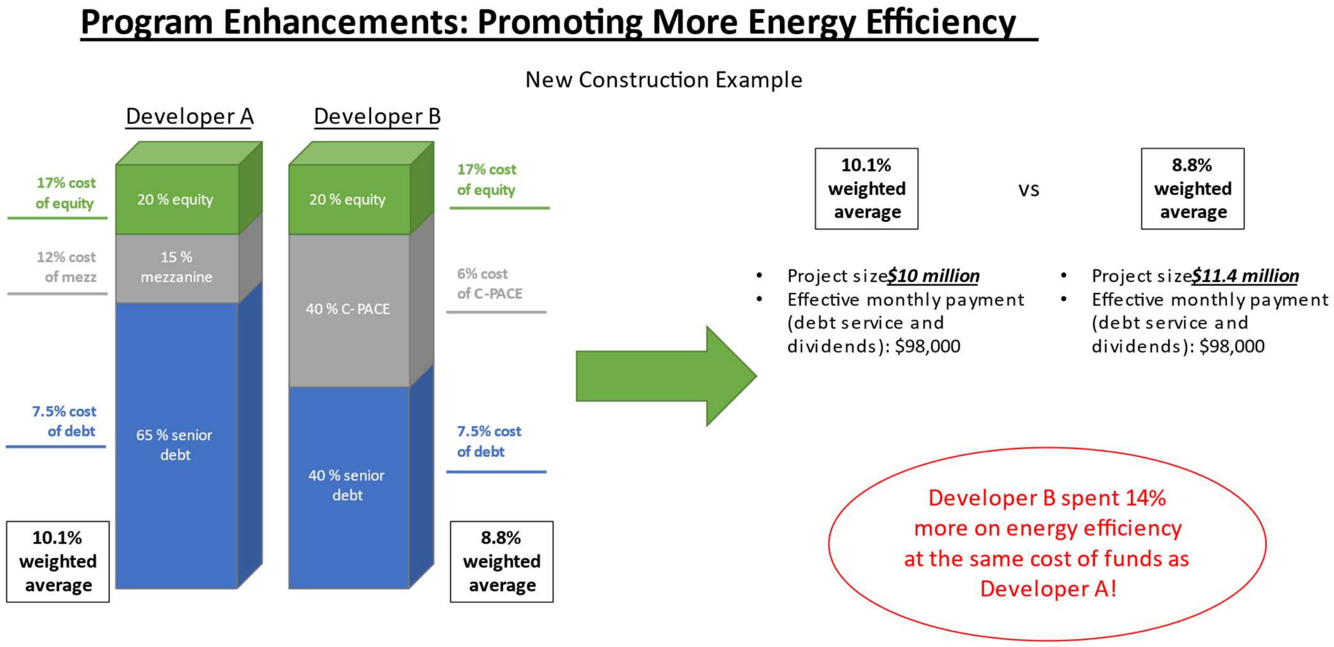
financing than they otherwise would provide (up to 20 years) and at favorable interest rates. From the Borrower's perspective, the C-PACE assessment is key to procure such favorable terms with the loan secured by the property opposed to business balance sheet. In other words, C-PACE provides a limited recourse lending window with very favorable terms.

[2] Higher debt ratios can lead to greater defaults. We believe that an increase in LTV is well measured by other controls of the C-PACE Program. From senior lender consents, loan underwriting standards from additional/sophisticated institutions, and Program Manager/County approvals of all projects, we believe there is much more incremental benefit to increasing project loan to values than incremental risk. As laid out in Bill 46-21, the LTV changes also have a sunset provision so that the Council can revisit any potential detrimental performance.

be compliant should BEPS govern their property energy standards and may require programs like C-PACE to finance the improvements.

New Construction: C-PACE for new construction is important for reaching the County's climate goals. A previous Council amendment set the groundwork to allow for new construction in C-PACE, but the new Bill 46-21 will provide LTV ratios that ***activate the developer community***.

C-PACE typically replaces mezzanine investment in new construction projects. It serves to substitute in a lower rate, and thus reduce the cost of capital for the overall project. This is financially positive for developers/building owners as it broadens repayment capacity and accelerates the project's break-even point. C-PACE can provide ***a better financial situation*** the more energy efficient a building becomes, even when the overall project costs are higher. To visualize this, the following shows a capital benefit from a better energy performing construction:



Another way to look at the above example is for a project that costs the same amount. If the above projects were $10 million, the use of C-PACE would bring down the entire cost of the project. Both examples are meaningful in an environment where buildings can cost tens of millions of dollars or more.

2. ***Retroactivity***. In addition to LTV changes, Bill 46-21 provides for retroactive (lookback) financing. Retroactivity offers many benefits as described below. Retroactive C-PACE is used in 12 other state programs with one-to three-year lookback periods. In Maryland, retroactive C-PACE is available in the City of Baltimore and Prince George's County. Baltimore recently approved a warehouse facility project for retroactive financing in January 2021.

Retroactivity can provide an ***economic recovery*** opportunity in response to COVID-19. Commercial and multifamily properties that have recently had qualifying energy work done may find themselves with cash preservation goals to cover working capital needs. Retroactive C-PACE allows property owners to replace more expensive debt with C-PACE's low-rate, long-term financing, improving liquidity.

Retroactive C-PACE allows the County to accommodate ***commercial entities lacking resources and time*** to access C-PACE prospectively, which presents an opportunity to address equity barriers that can exist with financing programs. If a commercial entity did not have the time/resources to investigate C-PACE at the time of an improvement, the opportunity to retroactively utilize C-PACE would provide a more efficient capital source. Commercial entities face a variety of challenges in building maintenance, ***including emergency measures***. When facing emergency maintenance/replacement issues, there is often not time to submit a C-PACE application ahead of time and wait for the standard 10-day application approval time.

A final key point about retroactive C-PACE is that it allows for a developer to utilize C-PACE at different times in a construction timeline. Senior lenders may not consent until a project is substantially complete. Retroactive C-PACE provides for a ***better relationship with senior lenders and credit risk mitigation***. For many senior lenders, C-PACE is a good term option to free up cash flows but not necessarily during construction when they are facing greater risks.

3. ***Climate resilience***. In 2021, the Maryland C-PACE enabling legislation was amended to add climate resilience among the list of eligible measures that counties can activate in their C-PACE programs. Montgomery County has an opportunity to follow this state direction and greatly improve the resilience of county properties by enacting Bill 46-21.

Resiliency can mean different things to different people. For C-PACE, we consider specific reliance measures to include the following:

- Energy Supply
  - Renewable Energy
  - Combined Heat and Power (CHP)
  - Battery Storage
  - Backup Generation
  - Microgrid
  - Electric Vehicle Charging
- Resource Conservation
  - Efficient Lighting and HVAC
  - Water Efficiency
  - Building Envelope
- Structure Hardening
  - Seismic Retrofits
  - Wind-Resistant Roofs and Windows

- Flood Mitigation

These measures provide three key benefits: (i) energy supply resilience ensures that building systems continue operating; (ii) resource conservation measures reduce energy and water demand and increase operating time on backup; and (iii) structure hardening mitigates property damage, injury, and system outages. We believe that these benefits are important for properties to strengthen operations and property value.

Furthermore, climate resiliency is a strong ***risk mitigation tool***. Research shows that the value at stake from climate-induced hazards could, conservatively, increase from about 2 percent of global GDP to more than 4 percent of global GDP in 2050. And the risks associated with climate change are not only multiplying, but they are also disproportionately affecting poorer populations. Montgomery County is not immune to extreme weather events exacerbated by climate change, and C-PACE can be a tool to effectively finance solutions, rather than absorb the payout costs of insurance afterward.

Conclusion

On a national level, C-PACE has had a meteoric rise, with almost 40 jurisdictions now actively administering C-PACE programs, and over $2 billion in dollar volume across 2,500 projects. We are keen to see the use of C-PACE increase equivalently in Montgomery County so that the County can achieve its climate goals. The Green Bank has been proud to provide businesses with climate finance strategies and C-PACE is an important arrow in the quiver. Bill 46-21 provides the County a success in aligning the incentives of owners and developers with greener and more resilient investments.