

Bill No. 46-21
Concerning: Environmental Sustainability
– Commercial Property Assessed
Clean Energy Program - Amendments
Revised: 02/28/2022 Draft No. 2
Introduced: November 30, 2021
Enacted: March 15, 2022
Executive: March 28, 2022
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Sunset Date: _____
Ch. 9, Laws of Mont. Co. 2022

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

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

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

3 **18A-33. Definitions.**

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

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

9 *Climate Related Improvements or Improvements* include measures that address:

- 10 (1) renewable energy;
- 11 (2) energy and water efficiency;
- 12 (3) environmental remediation;
- 13 (4) grid resilience; or
- 14 (5) property resilience.

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

18 *Commercial Property Assessed Clean Energy Program or Program* means a
 19 program that facilitates Climate Related Improvements [energy improvements]
 20 and requires repayment through a surcharge on the owner’s property tax bill.

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

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

27 *Department* means the Department of Finance.

28 *Director* means the Director of the Department or the Director’s designee.

29 *Energy efficiency [and/or renewable energy improvement or improvement]*
 30 means any equipment, device, or material that is intended to decrease energy
 31 consumption or [expand] use [of renewable energy sources, including;] less
 32 energy to perform the same task.

- 33 [(1) insulation in any wall, roof, floor, foundation, or heating and cooling
 34 distribution system;
- 35 (2) a storm window or door, multi-glazed window or door, heat-absorbing or
 36 heat-reflective glazed and coated window and door system, or additional
 37 glazing, reduction in glass area, and other window and door system
 38 modification that reduces energy consumption;
- 39 (3) an automated energy control system;
- 40 (4) a heating, ventilating, or air-conditioning and distribution system
 41 modification or replacement;
- 42 (5) caulking, weather-stripping, and air sealing;
- 43 (6) replacement or modification of a lighting fixture to reduce the energy use
 44 of the lighting system;
- 45 (7) an energy recovery system;
- 46 (8) a day lighting system;
- 47 (9) the installation or upgrade of electrical wiring or outlets to charge a motor
 48 vehicle that is fully or partially powered by electricity;
- 49 (10) a measure that reduces the usage of water or increases the efficiency of
 50 water usage;
- 51 (11) any other installation or modification of equipment, device, or other
 52 material intended to decrease energy consumption or expand the use of a
 53 renewable energy source;

- 54 (12) any measure or system that makes use of or expands a renewable source
 55 of energy, including solar water heater, solar thermal electric,
 56 photovoltaic's, wind, biomass, hydroelectric, geothermal electric,
 57 geothermal heat pumps, anaerobic digestion, tidal energy, wave energy,
 58 ocean thermal, fuel cells using renewable fuels, and geothermal direct-
 59 use; or
- 60 (13) any renewable energy system that is a fixture, product, device, or
 61 interacting group of fixtures, products, or devices on the customer's side
 62 of the electricity meter that uses at least one renewable energy source to
 63 generate electricity. A renewable energy system includes a biomass
 64 system, but does not include an incinerator or digester.]

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

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

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

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

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

79 *Qualified property* means any new or existing commercial real property that
 80 meets the eligibility criteria for the Program.

81 *Renewable energy* [source] means [a source of] energy that naturally
 82 replenishes over a human, not a geological, time frame and that is ultimately
 83 derived from solar power, water power, or wind power. A renewable energy
 84 source does not include petroleum, nuclear, natural gas, or coal.

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

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

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

97 **Sec. 18A-34. Commercial Property Assessed Clean Energy Program Established.**

- 98 (a) *Established.* The Director must create and administer a Commercial
 99 Property Assessed Clean Energy Program.
- 100 (b) *Third-party lender.*
 - 101 (1) The Director may enter into an agreement with a third-party
 102 lender that [is either a County designated lender or a private
 103 lender that] funds a loan for [an improvement] a Climate Related
 104 Improvement. The agreement must provide for the repayment of
 105 the loan for the [improvement] Improvement and any cost of
 106 administering the Program through a [surcharge] Surcharge on
 107 the qualified property. The loan may include the cost of materials

108 and labor necessary for installation, any permit fee, any
109 inspection fee, any application or administrative fee, any bank or
110 lender fee, and any other fee that the property owner may incur
111 for the installation of the [improvement] Climate Related
112 Improvement. The third-party lender must submit a request for
113 collection of each [surcharge] Surcharge amount to the County
114 designated program manager or, if there is no County designated
115 program manager, to the Department no later than April 1 of each
116 year.

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

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

135 amount of each [surcharge] Surcharge billed, collected by the County,
 136 and remitted to the private lender, description of project, any
 137 administrative fees, the amount of each loan, the amount of each loan
 138 balance, and the term of each loan. This report must be submitted to
 139 the Department no later than February 15 of each year pertaining to
 140 activity in the prior calendar year.

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

144 **Sec. 18A-35. Eligibility.**

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

146 (a) *Eligibility.*

147 (1) The property must be a qualified property.

148 (2) Before any loan is approved under the Program, the County must
 149 give due regard to the property owner's ability to repay a loan in
 150 a manner substantially similar to that required for a mortgage
 151 loan under Sections 1-401, 12-127, 12-311, 12-409.1, 12-925,
 152 and 12-1029 of the Commercial Law Article of the Maryland
 153 Code. The County has authority to deny approval of any loan
 154 under the Program that, in its sole determination, does not meet
 155 these Sections of the Maryland Code.

156 (3) The property owner must submit the following to the [private]
 157 lender [or the County designated lender] at the time of
 158 application for funding:

159 (A) express written consent of any holder of an existing
 160 mortgage or deed of trust on a qualified property;

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

164 (C) describe and certify on an application submitted for review
 165 that best efforts will be used to contract for services with a
 166 minority-owned business enterprise, small business, or
 167 County-based business for energy efficiency, renewable
 168 energy, and other approved climate related improvements;
 169 and

170 ~~[[C]]~~(D) confirmation that:

171 (i) the proposed [improvements] Climate Related
 172 Improvement will be properly permitted and
 173 permanently affixed to the qualified property and
 174 comply with all applicable State and federal statutes
 175 and regulations, as determined by the appropriate
 176 regulatory authority[.]; or

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

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

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

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

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

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

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

207 (B) For new commercial construction[:]. This subsection, 18A-
208 35(a)(5)(B), shall be in effect for five (5) calendar years
209 after the effective date of this amendment unless further
210 legislative action is taken to extend it. After such date, loan
211 amounts are subject to the conditions set by subsection 18A-
212 35(a)(5)(D) or may be set at a higher amount subject to
213 Director approval.

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

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

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

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

236 (C) Existing commercial construction.

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

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

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

250 (D) For new commercial construction.

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

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

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

265 (iv) The full cash value and appraised value of the
 266 property must be determined based on the estimated

267 value of the property as completed. The appraised
 268 value must be determined by a Certified General Real
 269 Estate Appraiser and must have been certified no
 270 more than 12 months before the date of the loan
 271 application.

272 (b) *Property assessed clean energy surcharge.*

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

276 (2) A [surcharge] Surcharge must be imposed under a written
 277 agreement between the [County designated or] private lender and
 278 the County. The [surcharge] Surcharge will be recorded in land
 279 records of the County, at the expense of the owner, within 30
 280 days of the execution of a clean energy loan financing agreement.

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

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

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

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

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

- 293 (E) appraised value of the qualified property as certified in the
- 294 appraisal report submitted by a Certified General Real
- 295 Estate Appraiser if the eligibility requirement in 18A-
- 296 35(a)(4) is based on the appraised value of the qualified
- 297 property;
- 298 (F) loan to value documentation; and
- 299 (G) any other financial or program document that the Director
- 300 deems necessary.
- 301 (4) In addition to the administrative fees in Section 18A-34(c), the
- 302 County may collect an administrative fee through the [surcharge]
- 303 Surcharge to cover charges relating to lending, program
- 304 management, billing, or collection.

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

- 306 (a) The County must collect the amount financed through a [surcharge]
- 307 Surcharge on the property owner's real property tax bill and forward
- 308 payments received by the County to the County designated program
- 309 manager or, if there is no County designated program manager, to the
- 310 lender no later than 30 days after the payment due dates for real
- 311 property taxes. Payment due dates for semi-annual real property taxes
- 312 are September 30 for the first installment and December 31 for the
- 313 second installment, and for annual real property taxes the payment due
- 314 date is September 30.
- 315 (b) After receiving written notice from the County designated program
- 316 manager of the execution of a clean energy loan financing agreement,
- 317 the County must add the [surcharge] Surcharge to the property tax bill.

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

321 (d) The [surcharge] Surcharge and any accrued interest or penalty
 322 constitutes a first lien on the real property to which the [surcharge]
 323 Surcharge applies until paid. An unpaid [surcharge] Surcharge will be,
 324 until paid, a lien on the qualified property on which it is imposed from
 325 the date it becomes payable. he [surcharge] Surcharge will accrue
 326 interest and penalty and will be treated and collected like all other
 327 County property taxes. Any delinquency will be collected through the
 328 County Tax Sale process. The provisions of Title 14, Subtitle 8 of the
 329 Tax – Property Article of the Maryland Code that apply to a tax lien
 330 will also apply to the lien created under this law. Any delinquent
 331 [surcharge] Surcharge collected through the County Tax Sale process
 332 must be forwarded to the County designated program manager or, if
 333 there is no County designated program manager, to the lender no later
 334 than 30 days after the payment was received.

335 **Sec. 18A-37. Regulations; annual report.**

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

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

342 (c) The report must include details about outreach and education efforts by
 343 the designated program manager to encourage and disseminate
 344 information related to contracting with minority-owned businesses,

345 including marketing strategies, promotions, availability of online
346 directory, and website presence.

