

Bill No. 40-12
Concerning: Economic Development -
Green **[[Organization Supplement]]**
Investor Incentive Program
Revised: 4/3/2013 Draft No. 3
Introduced: December 4, 2012
Enacted: April 16, 2013
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner and Leventhal

AN ACT to:

- (1) authorize the County to provide qualified applicants a Green **[[Organization Supplement]]** Investor Incentive Payment; and
- (2) generally amend the law governing County financial incentives for investment in certain businesses.

By adding

Montgomery County Code
Chapter 20, Finance
Section 20-76C

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. Section 20-76C is inserted as follows:**

2 **20-76C. Green [[Organization Supplement]] Investor Incentive Program.**

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

5 Green product or service means [[the delivery of a product or service in
6 the following areas:

7 (1) renewable, clean, or distributed energy;

8 (2) energy efficiency products or services;

9 (3) sustainable farming and food distribution;

10 (4) water quality and conservation;

11 (5) pollution reduction and remediation;

12 (6) recycling, reuse, and resource recovery; or

13 (7) biodiversity and natural resource conservation.]]

14 a product or service that measures, prevents, limits, minimizes, or
15 corrects environmental damage to water, air, or soil, as well as problems
16 related to waste, ecosystems, biodiversity, habitat or natural resource
17 depletion. All claims related to environmental attributes, as applicable,
18 for a product or service, must conform to guidelines published by the
19 Federal Trade Commission or other appropriate entity designated by the
20 Director of Environmental Protection.

21 Investment means the contribution of money in cash or cash equivalents
22 expressed in United States dollars, at a risk of loss, to a qualified green
23 company in exchange for stock, a partnership or membership interest, or
24 other ownership interest in the equity of the qualified green company,
25 title to which ownership interest vests in the qualified investor but does
26 not include debt.

27 Qualified green [[organization]] company means any [[business,
 28 cooperative, or non-profit]] entity of any form duly organized and
 29 existing under the laws of any jurisdiction for the purpose of conducting
 30 business for profit, excluding a sole proprietorship, that:

31 (1) [[provides a green product or service]] develops an innovative,
 32 new to the market, technology, or a unique combination of
 33 technologies, available only from that company, which adds
 34 significant value to a green product or service or is engaged in
 35 research or development of a such technology or technologies;
 36 and

37 (2) implements a sustainable operation as verified by a third party.

38 Qualified investor means any individual or entity that invests at least
 39 [[[\$5,000]] \$25,000 in a qualified [[Montgomery County]] green
 40 [[organization]] company and that is required to file an income tax
 41 return in any jurisdiction. Qualified investor does not include:

42 (1) a qualified pension plan, individual retirement account, or other
 43 qualified retirement plan under the Employee Retirement Income
 44 Security Act of 1974, as amended, or fiduciaries or custodians
 45 under such plans, or similar tax-favored plans or entities under
 46 the laws of other countries;

47 (2) an individual or entity that has an ownership interest in the
 48 qualified green company other than from a previous investment,
 49 which previous investment by itself or with the additional
 50 investment does not create a 25% or greater equity holding by the
 51 qualified investor in the qualified green company; or

52 (3) an individual or entity deriving any financial benefit, including
 53 salary or other compensation, from the qualified green company
 54 in which the qualified investor makes an investment.

55 Sustainable operation means an organization validated by a third party
 56 under one of the following:

57 (1) Montgomery County [[Certified]] Green Business Certification
 58 Program, as certified by the Department of Environmental
 59 Protection;

60 (2) [[Certified]] B Corp Certification from B Lab;

61 (3) Green America Gold Certification;

62 (4) Green Seal Certification;

63 (5) International Organization for Standardization ISO 14001
 64 [[certified]] Certification; or

65 (6) any other third party validation approved by the Department of
 66 Environmental Protection.

67 (b) Incentive Payment [[of supplement]]. The Director of Finance must
 68 pay, subject to the amount of the annual appropriation in that fiscal year,
 69 [[a Green Organization Supplement]] an incentive payment to each
 70 [[applicant]] qualified investor who meets certain eligibility standards.

71 (c) Eligibility standards. [[An applicant]] A qualified investor, who need
 72 not be a County resident, is eligible to receive the [[Supplement]]
 73 incentive payment if the [[applicant]] qualified investor:

74 [[(1) is a qualified investor; and

75 (2)]] invests in a qualified green [[organization]] company that:

76 [[(A)]] (1) has its headquarters and base of operations in the County; or

77 ~~[(B)]~~ (2) has signed a lease for at least 5 years to open a [facility]
 78 qualified green company with its headquarters and base of
 79 operations in the County; and

80 (3) has been in business for less than 10 years and employs less than
 81 50 people and does not have its securities publicly traded on any
 82 exchange.

83 (d) Additional eligibility standards. The County Executive, by Method 2
 84 regulation, may impose other eligibility standards. However, those
 85 standards must not make any person ineligible to receive the
 86 [Supplement] incentive payment who would be eligible under
 87 subsection (c).

88 (e) Ineligible investments. ~~[[A qualified]]~~ An investor must not receive [a
 89 supplement for capital] an incentive payment [used] for [any]:

90 (1) the installation of any geothermal, or solar photovoltaic, or
 91 similar system; or

92 (2) any building green or energy efficiency improvement.

93 (f) Amount of [supplement] incentive payment. The [Supplement paid]
 94 incentive payment made, subject to the amount of the annual
 95 appropriation in that fiscal year, to each [recipient is a one-time
 96 Supplement and must equal 50% of the recipient's investment in a
 97 qualified green organization, or a lower percentage set in the annual
 98 operating budget resolution, up to \$25,000.]] qualified investor must
 99 equal the amount of the investment made by the qualified investor,
 100 divided by the total amount of investments made by all qualified
 101 investors in the same calendar year, multiplied by the total amount of
 102 funds appropriated for the green investor incentive program in that year.

103 The incentive payment made to any qualified investor in any single
 104 fiscal year must not exceed the lesser of:

- 105 (1) 50% of the investment made by the qualified investor in that
 106 fiscal year;
 107 (2) 15% of the total annual and supplement appropriation for the
 108 green investor incentive program in that fiscal year; or
 109 (3) \$50,000.

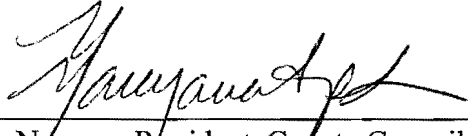
110 (g) In order to calculate the amount of the incentive payment to be made to
 111 a qualified investor under Subsection (f), the Director of the Department
 112 of Economic Development must, by January 15 of each calendar year,
 113 compile a list of each qualified investor making an investment in a
 114 qualified green company and the amount of that investment during the
 115 preceding calendar year. This list must be determined using the
 116 applications and any supporting documents qualified investors submit.
 117 The Director may take any other action necessary to administer the
 118 incentive payment. The Executive may issue regulations under Method
 119 (2) to implement this Section.

120 ~~[(g)]~~ (h) Application required. The Director of the Department of Economic
 121 Development must require each ~~[[eligible person]]~~ qualified investor to
 122 submit an application for the ~~[[Supplement]]~~ incentive payment and
 123 may take any other action necessary to administer the ~~[[Supplement]]~~
 124 incentive payment. The Executive may issue regulations under Method
 125 (2) to specify an application process and otherwise implement this
 126 Section.

127 ~~[(h)]~~ (i) Fraudulent applications. A person who submits a false or fraudulent
 128 application, or withholds material information, to obtain ~~[[a]]~~ an
 129 incentive payment under this Section has committed a Class A

130 violation. In addition, the person must repay the County for all amounts
 131 improperly paid and all accrued interest and penalties that would apply
 132 to those amounts as if they were overdue taxes. A person who violates
 133 this Section is liable for all court costs and expenses and reasonable
 134 attorney's fees of the County incurred in any civil action brought by the
 135 County to recover any payment, interest, or penalty. The County may
 136 collect any amount due, and otherwise enforce this Section, by any
 137 other appropriate legal action.

138 *Approved:*

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 140 _____
 Nancy Navarro, President, County Council

9/16/13

 Date

141 *Approved:*

142 _____
 143 _____
 Isiah Leggett, County Executive

Date

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

145

146

 Linda M. Lauer, Clerk of the Council

Date