

Bill No. 6-15  
Concerning: Commercial Property  
Assessed Clean Energy Program -  
Established  
Revised: 3/27/2015 Draft No. 2  
Introduced: February 3, 2015  
Enacted: March 31, 2015  
Executive: April 8, 2015  
Effective: July 8, 2015  
Sunset Date: None  
Ch. 16, Laws of Mont. Co. 2015

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT to:**

- (1) establish a Commercial Property Assessed Clean Energy Program to assist qualifying commercial property owners to make energy improvements;
- (2) allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a real property tax bill;
- (3) establish that the surcharge on a real property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and
- (4) generally amend the environmental sustainability law.

By amending

Montgomery County Code  
Chapter 18A, Environmental Sustainability  
Article 5  
Sections 18A-33, 18A-34, 18A-35, 18A-36, and 18A-37

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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           **Article 5. Commercial Property Assessed Clean Energy Program**

4 **18A-33. [Commercial Property Assessed Clean Energy Program] Definitions.**

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

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

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

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

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

20           Department means the Department of Finance.

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

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

27           (1) insulation in any wall, roof, floor, foundation, or heating and

- 28                   cooling distribution system;
- 29           (2)   a storm window or door, multi-glazed window or door, heat-  
30                   absorbing or heat-reflective glazed and coated window and door  
31                   system, or additional glazing, reduction in glass area, and other  
32                   window and door system modification that reduces energy  
33                   consumption;
- 34           (3)   an automated energy control system;
- 35           (4)   a heating, ventilating, or air-conditioning and distribution system  
36                   modification or replacement;
- 37           (5)   caulking, weather-stripping, and air sealing;
- 38           (6)   replacement or modification of a lighting fixture to reduce the  
39                   energy use of the lighting system;
- 40           (7)   an energy recovery system;
- 41           (8)   a day lighting system;
- 42           (9)   the installation or upgrade of electrical wiring or outlets to charge  
43                   a motor vehicle that is fully or partially powered by electricity;
- 44           (10) a measure that reduces the usage of water or increases the  
45                   efficiency of water usage;
- 46           (11) any other installation or modification of equipment, device, or  
47                   other material intended to decrease energy consumption or expand  
48                   the use of a renewable energy source;
- 49           (12) any measure or system that makes use of or expands a renewable  
50                   source of energy, including solar water heater, solar thermal  
51                   electric, photovoltaic's, wind, biomass, hydroelectric, geothermal  
52                   electric, geothermal heat pumps, anaerobic digestion, tidal energy,  
53                   wave energy, ocean thermal, fuel cells using renewable fuels, and  
54                   geothermal direct-use; or

55           (13) any renewable energy system that is a fixture, product, device, or  
 56           interacting group of fixtures, products, or devices on the  
 57           customer's side of the electricity meter that uses at least one  
 58           renewable energy source to generate electricity. A renewable  
 59           energy system includes a biomass system, but does not include an  
 60           incinerator or digester.

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

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

65           Qualified property means any commercial real property that meets the  
 66           eligibility criteria for the Program.

67           Renewable energy source means a source of energy that naturally  
 68           replenishes over a human, not a geological, time frame and that is  
 69           ultimately derived from solar power, water power, or wind power.

70           Renewable energy source does not include petroleum, nuclear, natural  
 71           gas, or coal. A renewable energy source comes from the sun or from  
 72           thermal inertia of the earth and minimizes the output of toxic material in  
 73           the conversion of the energy and includes:

- 74           (1) non-hazardous, organic biomass material;
- 75           (2) solar electric and solar thermal energy;
- 76           (3) wind energy;
- 77           (4) geothermal energy; and
- 78           (5) methane gas captured from a landfill.

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

82 [(b) The Executive must, by May 19, 2014, prepare a plan for implementing  
 83 a Commercial Property Assessed Clean Energy Program that analyzes  
 84 and provides recommendations on the following elements:

- 85 (1) standards for eligible energy and environmental improvements;
- 86 (2) energy audit or project design review requirements;
- 87 (3) procedures for monitoring project progress and post-installation  
 88 inspections;
- 89 (4) program funding sources;
- 90 (5) lending standards and priorities;
- 91 (6) minimum and maximum loan amounts;
- 92 (7) interest rates, terms, and conditions;
- 93 (8) application procedures, including necessary supporting  
 94 documentation;
- 95 (9) criteria for adequate security;
- 96 (10) procedures to refer applicants to other public and private sources  
 97 of funds and incentives;
- 98 (11) procedures related to decisions on loan acceptance and denial, or  
 99 loan terms and conditions;
- 100 (12) procedures for nonpayment or default;
- 101 (13) disclosure requirements for real estate transactions;
- 102 (14) criteria for loan disbursement; and
- 103 (15) any additional requirements necessary for program operation or  
 104 security of loan funds identified by the Executive.]

105 **[[18A-34 – 18A-37. Reserved.]]**

106 **18A-34. Commercial Property Assessed Clean Energy Program established.**

- 107 (a) Established. The Director must create and administer a Commercial  
 108 Property Assessed Clean Energy Program.

- 109       **(b)**    Third-party lender. The Director may enter into an agreement with a  
110           third-party lender that is either a County designated lender or a private  
111           lender that funds a loan for an improvement. The agreement must provide  
112           for the repayment of the loan for the improvement and any cost of  
113           administering the Program through a surcharge on the qualified property.  
114           The loan may include the cost of materials and labor necessary for  
115           installation, any permit fee, any inspection fee, any application or  
116           administrative fee, any bank or lender fee, and any other fee that the  
117           property owner may incur for the installation of the improvement. The  
118           third-party lender must submit a request for collection of each surcharge  
119           amount to the County designated program manager or, if there is no  
120           County designated program manager, to the Department no later than  
121           April 1 of each year.
- 122       **(c)**    County designated program manager. The Director may enter into an  
123           agreement with a County designated program manager. The County  
124           designated program manager must notify the Department of the amount  
125           of the surcharge for each account to be collected on the real property tax  
126           bill for that year's levy no later than May 1 of each year, and in a format  
127           approved by the Department. The County designated program manager  
128           will receive the collections from the County, reconcile the collected and  
129           billed surcharge for each account, and remit the surcharge amount to the  
130           County designated lender or private lender. The County designated  
131           program manager must report annually to the County on the participants  
132           in the Program by name, property address, property tax account number,  
133           amount of each surcharge billed, collected by the County, and remitted to  
134           the lender, description of project, any administrative fees, the amount of  
135           each loan, the amount of each loan balance, and the term of each loan.

136 This report must be submitted to the Department no later than February  
 137 15 of each year pertaining to activity in the prior calendar year.

138 (d) The Director may enter into an agreement with one person who provides  
 139 both County designated lender and County designated program manager  
 140 services.

141 **18A-35. Eligibility.**

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

143 (a) Eligibility.

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

145 (2) Before any loan is approved under the Program, the County must  
 146 give due regard to the property owner's ability to repay a loan in a  
 147 manner substantially similar to that required for a mortgage loan  
 148 under Sections 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of  
 149 the Commercial Law Article of the Maryland Code.

150 (3) The property owner must submit the following to the private lender  
 151 or the County designated lender at the time of application for  
 152 funding:

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

155 (B) verification that there are no delinquent fees, taxes, water or  
 156 sewer charges or other special assessments on the qualified  
 157 property.

158 ~~[(3)]~~ (4) The loan amount under this Program must:

159 (A) be at least \$5,000 and no more than 20% of the full cash  
 160 value of the qualified property. The full cash value is  
 161 determined by the Maryland State Department of  
 162 Assessments and Taxation; and

163                    (B) together with the outstanding balance of the mortgage or  
 164                               deed of trust, be no more than 90% of the full cash value of  
 165                               the qualified property.

166           (b) Property assessed clean energy surcharge.

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

170                   (2) A surcharge may be imposed under a written agreement between  
 171                               the County designated lender or private lender and the County.

172                   (3) As a condition for entering into an agreement under the Program,  
 173                               the County designated lender or private lender must provide the  
 174                               County designated program manager and the Department a copy  
 175                               of the loan documents and documents that verify:

176                               (A) the property owner's ability to repay the Property Assessed  
 177                                       Clean Energy loan in a manner substantially similar to that  
 178                                       required for a mortgage loan;

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

181                               [[B]] (C) there are no delinquent assessments on the qualified  
 182                                       property under the Program;

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

184                               [[D]] (E) the improvement is permanently affixed to the qualified  
 185                                       property and complies with all applicable State and federal  
 186                                       statutes and regulations, as determined by the appropriate  
 187                                       regulatory authority;

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

189                               [[F]] (G) loan to value documentation; and



190 ~~[[G]]~~ (H) any other financial or program document that the  
 191 Director deems necessary.

192 (4) In addition to the administrative fees in Section 18A-34(c), the  
 193 County may collect an administrative fee through the surcharge to  
 194 cover charges relating to lending, program management, billing, or  
 195 collection.

196 **18A-36. Payment of surcharge; lien.**

197 (a) The County must collect the amount financed through a surcharge on the  
 198 property owner's real property tax bill and forward payments received by  
 199 the County to the County designated program manager or, if there is no  
 200 County designated program manager, to the lender no later than 30 days  
 201 after the payment due dates for real property taxes. Payment due dates for  
 202 semi-annual real property taxes are September 30 for the first installment  
 203 and December 31 for the second installment, and for annual real property  
 204 taxes the payment due date is September 30.

205 (b) If the property owner sells the qualified property, the buyer must continue  
 206 to pay the surcharge levied on the annual property tax bill.

207 (c) The surcharge and any accrued interest or penalty constitutes a first lien  
 208 on the real property to which the surcharge applies until paid. An unpaid  
 209 surcharge will be, until paid, a lien on the qualified property on which it  
 210 is imposed from the date it becomes payable. The surcharge will accrue  
 211 interest and penalty and will be treated and collected like all other County  
 212 property taxes. Any delinquency will be collected through the County  
 213 Tax Sale process. The provisions of Title 14, Subtitle 8 of the Tax -  
 214 Property Article of the Maryland Code that apply to a tax lien will also  
 215 apply to the lien created under this law. Any delinquent surcharge  
 216 collected through the County Tax Sale process must be forwarded to the


217 County designated program manager or, if there is no County designated  
218 program manager, to the lender no later than 30 days after the payment  
219 was received.

220 **18A-37. Regulations; annual report.**

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

223 (b) The Executive must submit an annual report to the County Council by  
224 March 15 of each year describing program participation, number and  
225 dollar value of surcharge billed and collected, and other relevant  
226 information pertaining to the prior calendar year.

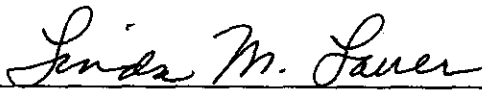
227 *Approved:*

228  3/31/15  
George Leventhal, President, County Council Date

229 *Approved:*

230  4/8/15  
Isiah Leggett, County Executive Date

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

232  4/8/15  
Linda M. Lauer, Clerk of the Council Date