

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2018 Legislative Session

Bill No. CB-29-2018

Chapter No. 19

Proposed and Presented by The Chair (by request – County Executive)

Introduced by Council Members Glaros, Davis, Turner, Taveras

Co-Sponsors _____

Date of Introduction July 2, 2018

BILL

1 AN ACT concerning

2 Commercial Property Assessed Clean Energy Program

3 For the purpose of establishing the Commercial Property Assessed Clean Energy Program (C-
4 PACE) to allow commercial property owners to access financing for qualifying energy efficiency
5 and clean energy improvements for their buildings through loans from participating lenders.

6 BY adding:

7 SUBTITLE 10. FINANCE AND TAXATION.

8 Sections 10-317, 10-318, 10-319, 10-320, 10-321

9 The Prince George's County Code

10 (2015 Edition; 2017 Supplement).

11 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
12 Maryland, that Sections 10-317, 10-318, 10-319, 10-320 and 10-321 of the Prince George's
13 County Code be and the same are hereby added:

14 SUBTITLE 10. FINANCE AND TAXATION.

15 **DIVISION 25. CLEAN ENERGY LOAN PROGRAM.**

16 **Sec. 10-317. Definitions.**

17 (a) In this Division, the following definitions have the following meanings:

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

21 (2) **Commercial property** has the meaning stated in the Local Government Article.

1 Section 1-1101, of the Annotated Code of Maryland. Commercial property includes any
 2 industrial, multi-family rental residential (more than four dwelling units), non-profit,
 3 institutional, or agricultural property that meets the eligibility requirements of Subtitle 10,
 4 Division 25.

5 (3) **Commercial Property Assessed Clean Energy Program or Program** means a
 6 program that facilitates energy improvements and requires repayment through a surcharge on the
 7 owner’s property tax bill.

8 (4) **County designated lender** means a person who may be selected by the County or
 9 Program Manager to provide funding for the Program.

10 (5) **County designated program manager** means the Prince George’s Financial
 11 Services Corporation (trade name “FSC First”).

12 (6) **Department** means the Department of Finance.

13 (7) **Director** means the Director of the Department or the Director’s designee.

14 (8) **Energy efficiency and/or renewable energy improvement** means any
 15 equipment, device, or material that is intended to decrease energy consumption or expand use of
 16 renewable energy sources, including:

17 (A) Insulation in any wall, roof, floor, foundation, or heating and cooling
 18 distribution system;

19 (B) A storm window or door, multi-glazed window or door, heating-absorbing or
 20 heat-reflective glazed and coated window and door system, or additional glazing, reduction in
 21 glass area, and other window and door system modification that reduces energy consumption;

22 (C) An automated energy control system;

23 (D) A heating, ventilating, or air-conditioning and distribution system
 24 modification or replacement;

25 (E) Caulking, weather-stripping, and air sealing;

26 (F) Replacement or modification of a lightning fixture to reduce the energy use
 27 of the lighting system;

28 (G) An energy recovery system;

29 (H) A day lighting system;

30 (I) The installation or upgrade of electrical wiring or outlets to charge a motor
 31 vehicle that is fully or partially powered by electricity;

1 (J) A measure that reduces the usage of water or increases the efficiency of
 2 water usage;

3 (K) Any measure or system that makes use of or expands a renewable source of
 4 energy, including solar water heater, solar thermal electric, solar photovoltaic, wind, biomass,
 5 hydroelectric, geothermal electric, geothermal heat pumps, battery storage, anaerobic digestion,
 6 tidal energy, wave energy, ocean thermal, fuel cells using renewable fuels, and geothermal
 7 direct-use; or

8 (L) Any renewable energy system that is a fixture, product, device or interacting
 9 group of fixtures products, or devices on the customer’s side of the electricity meter that uses at
 10 least one renewable energy source to generate electricity. A renewable energy system includes a
 11 biomass system, but does not include an incinerator or digester.

12 (9) **Private lender** means a lender selected by the property owner to provide loan
 13 funds to the property owner for an improvement.

14 (10) **Property Owner** means a person who owns qualified property.

15 (11) **Qualified property** means any commercial real property that meets the eligibility
 16 criteria for the Program.

17 (12) **Renewable energy source** means a source of energy that naturally replenishes
 18 over a human, not a geological, timeframe that is ultimately derived from solar power, water
 19 power, or wind power.

20 (A) Renewable energy source does not include fossil fuels or nuclear.

21 (B) A renewable energy source comes from the sun or from thermal inertia of
 22 the earth and minimizes the output of toxic materials in the conversions of the energy and
 23 includes.:

24 (i) Non-hazardous, organic biomass material;

25 (ii) Solar energy equipment

26 (iii) Wind energy;

27 (iv) Geothermal energy;

28 (v) Biogas derived from non-hazardous sources.

29 (13) **Surcharge** means the annual repayment of a loan, including principal, interest,
 30 and related charges, that funds an improvement and is collected through the County real property
 31 tax billing process.

1 **Sec. 10-318. Commercial Property Assessed Clean Energy Program established.**

2 (a) Established. The Director must create and administer a Commercial Property Assessed
3 Clean Energy Program.

4 (b) Third-party lender.

5 (1) The Director may enter into an agreement with a third-party lender that is either a
6 County designated lender or a private lender that funds a loan for an improvement. The Director
7 shall give preference to County-based third-party lenders. The agreement must provide for the
8 repayment of the loan for the improvement and any cost of administering the program through a
9 surcharge on the qualified real property. The loan may include the cost of materials and labor
10 necessary for installation, cost of energy audit, commissioning, building accreditation, any
11 permit fee, any inspection fee, any application or administrative fee, any bank or lender fee, and
12 any other fee that the property owner may incur for the installation of the improvement. The
13 third-party lender must submit a request for collection of each surcharge amount to the County
14 designated program manager or, if there is no County designated program manager, to the
15 Department no later than April 1 of each year.

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

20 (c) County designated program manager. The Director may enter into an agreement with a
21 County designated program manager. The County designated program manager must notify the
22 Department of the amount of the surcharge for each account to be collected on the real property
23 tax bill for that year's levy no later than May 1 of each year, and in a format approved by the
24 Department. The County designated program manager will receive the collections from the
25 County, reconcile the collected and billed surcharge for each account, and remit the surcharge
26 amount to the County designated lender or private lender. The County designated program
27 manager must report annually to the County on the participants in the Program by name,
28 property address, energy and water savings per property address as contained in the energy audit,
29 property tax account number, amount of each surcharge billed, collected by the County, and
30 remitted to the lender, description of project, any administrative fees, the amount of each loan,
31 the amount of each loan balance, and the term of each loan. This report must be submitted to the

1 Department no later than February 15 of each year pertaining to activity in the prior calendar
 2 year.

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

5 **Sec. 10-319. Eligibility.**

6 (a) Eligibility. In order to be eligible for this Program, the following criteria must be met:

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

8 (2) Obtain an energy audit approved under program guidelines.

9 (3) Before any loan is approved under the Program, the County or its Program
 10 Manager must give due regard to the property owner's ability to repay a loan in a manner
 11 substantially similar to that required for a mortgage loan under Sections 12-127, 12-311, 12-
 12 409.1, 12-925, 12-1029 of the Commercial Law Article of the Maryland Code.

13 (4) The property owner must submit the following to the private lender or the County
 14 designated lender at the time of application for funding:

15 (A) Express written consent to the surcharge of any holder of an existing
 16 mortgage or deed of trust on a qualified property; and

17 (B) Verification that there are no delinquent fees, taxes, water or sewer charges
 18 or other special assessments on the qualified property.

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

20 (A) The loan amount must be for at least \$25,000 and not more than 20% of
 21 either the full cash value or the appraised value of the qualified property. The full cash value is
 22 determined by the Maryland State Department of Assessments and Taxation. The appraised value
 23 must be determined by a Certified General Real Estate Appraiser and must have been certified
 24 no more than 12 months before the date of the loan application.

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

28 (C) The County may not finance or fund any loan under the program, shall serve
 29 only as a program sponsor to facilitate loan repayment by including the surcharge on the County
 30 real property tax bill for the property, and shall incur no liability for the loan.

31 (6) The property owner shall agree to utilize "best efforts" to spend 35% of the total

1 costs incurred on the energy efficiency and clean energy improvements on contracts with
 2 County-based minority business enterprises, County-based small businesses, County-based
 3 businesses, and minority business enterprise firms. The property owner shall also submit a Local
 4 Spending Plan to the program manager for approval, subject to the satisfaction of the program
 5 manager. The Local Spending Plan shall demonstrate the manner in which the property owner
 6 will satisfy its commitment to meet the spending goal set forth in this paragraph.

7 (b) Property assessed clean energy surcharge.

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

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

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

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

17 (B) There are no delinquent taxes, special assessments, or water or sewer
 18 charges on the qualified property;

19 (C) There are no delinquent assessments on the qualified property under the
 20 Program;

21 (D) The property owner has obtained all necessary permits;

22 (E) The improvement is permanently affixed to the qualified property and
 23 complies with all applicable State and Federal statutes and regulations, as determined by the
 24 appropriate regulatory authority;

25 (F) Existing mortgage or deed of trust lender consent;

26 (G) Appraised value of the qualified property as certified in the appraisal report
 27 submitted by a Certified General Real Estate Appraiser if the eligibility requirement is based on
 28 the appraised value of the qualified property;

29 (H) Loan to value documentation; and

30 (I) Any other financial or program document that the Director deems necessary.

31 (4) In addition to the administrative fees, the County may collect an administrative

1 fee through the surcharge to cover charges relating to lending, program management, billing, or
2 collection.

3 **Sec. 10-320. Payment of surcharge; lien.**

4 (a) (The County must collect the amount financed through an annual surcharge on the
5 property owner’s real property tax bill and forward payments received by the County to the
6 County designated program manager or, if there is no County designated program manager, to
7 the lender no later than 30 days after the payment due dates for real property taxes. Payment due
8 dates for semi-annual real property taxes are September 30 for the first installment and
9 December 31 for the second installment, and for annual real property taxes the payment due date
10 is September 30.

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

13 (c) The surcharge and any accrued interest or penalty constitutes a first lien on the real
14 property to which the surcharge applies until paid. An unpaid surcharge will be, until paid, a lien
15 on the qualified property on which it is imposed from the date it becomes payable. The surcharge
16 will accrue interest and penalty and will be treated and collected like all other County property
17 taxes. Any delinquency will be collected through the County Tax Sale process. The provisions of
18 Title 14, Subtitle 8 of the Tax – Property Article of the Maryland Code that apply to a tax lien
19 will also apply to the lien created under this law. Any delinquent surcharge collected through the
20 County Tax Sale process must be forwarded to the County designated program manager or, if
21 there is no County designated program manager, to the lender no later than 30 days after the
22 payment was received.

23 **Sec. 10-321. Regulations; annual report.**

24 (a) The Executive may adopt regulations to administer the Program.

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

28 * * * * *

29 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
30 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
31 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of

1 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
2 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
3 Act, since the same would have been enacted without the incorporation in this Act of any such
4 invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection,
5 or section.

6 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
7 calendar days after it becomes law.

Adopted this 24th day of July, 2018.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Dannielle M. Glaros
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.