

Introduced 01.3.2023
Public Hearing 01.17.2023
Council Action 02.06.2023
Executive Action 02.08.2023
Effective Date 04.10.2023

County Council of Howard County, Maryland

2023 Legislative Session

Legislative Day No. 1

Bill No. 3 -2023

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending the Clean Energy Loan Program by defining certain terms; amending the scope of eligibility to receive a Clean Energy Loan; ~~adding~~ amending improvements that are eligible under the Program; adding qualifying costs that are eligible for reimbursement under the Program; clarifying default provisions; amending when surcharges will be collected; setting forth the term by which the Clean Energy Loan shall be repaid; setting forth the Clean Energy Loan Program Administrator; making certain technical corrections; and generally relating to the Clean Energy Loan Program.

Introduced and read first time Jan 3, 2023. Ordered posted and hearing scheduled.
By order Michelle Harrod
Michelle Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on Jan 17, 2023.
By order Michelle Harrod
Michelle Harrod, Administrator

This Bill was read the third time on Feb 6, 2023 and Passed ✓, Passed with amendments ✓, Failed _____.
By order Michelle Harrod
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7 day of Feb, 2023 at 11 a.m/p.m.
By order Michelle Harrod
Michelle Harrod, Administrator

Approved by the County Executive Feb 8, 2023
Calvin Ball
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the
2 Howard County Code is amended as follows:

3 By amending:

4 Title 20. Taxes, charges and fees.

5 Subtitle 12. Clean Energy Loan Program.

6
7 **Title 20. Taxes, charges and fees.**

8 **Subtitle 12. Clean Energy Loan Program**

9
10 **Section 20.1200. Definitions.**

11 In this subtitle, the following words have the meanings indicated:

12 (a) *Clean Energy Financing Agreement* means an agreement between a property owner
13 and a Clean Energy Lender providing for the terms and conditions of a Clean
14 Energy Loan.

15 (b) *Clean Energy Lender* means a private lender providing a Clean Energy Loan.

16 (c) *Clean Energy Loan* means any loan made by a private lender to a property owner
17 under the Clean Energy Loan Program.

18 (D) *CLEAN ENERGY LOAN FINANCING AGREEMENT* MEANS AN AGREEMENT BETWEEN A
19 PROPERTY OWNER AND A CLEAN ENERGY LENDER PROVIDING FOR THE TERMS AND
20 CONDITIONS OF A CLEAN ENERGY LOAN.

21 (E) *CLEAN ENERGY LOAN PROGRAM OR PROGRAM* MEANS THE CLEAN ENERGY LOAN
22 PROGRAM ESTABLISHED UNDER THIS SUBTITLE AND SECTION §1-1101 ET SEQ OF THE
23 LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND TO
24 PROVIDE LOANS TO PROPERTY OWNERS TO FINANCE OR REFINANCE QUALIFYING
25 PROJECTS.

26 ([[d]]F) *Clean Energy Loan Program Administrator* means any person or entity selected
27 by the county to manage the Clean Energy Loan Program.

28 ([[e]]G) *Clean Energy Loan Obligation* means all indebtedness and obligations of a
29 property owner to a Clean Energy Lender, ITS SUCCESSORS OR ASSIGNS, under a
30 Clean Energy Financing Agreement.

1 (([f])H) *Commercial Property* has the meaning stated in the Local Government Article,
2 [[section]]SECTION 1-1101, of the Annotated Code [[Of]]OF Maryland.

3 (([g])i) *Department* means the Department of Finance.

4 (J) *ENVIRONMENTAL REMEDIATION PROJECT* SHALL HAVE THE MEANING SET FORTH IN
5 SECTION 1-1101 OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF
6 MARYLAND.

7 (([h])K) *Property Owner* means an owner of commercial property.

8 (([i])L) *Person* includes an individual, receiver, trustee, guardian, executor, administrator,
9 fiduciary, or representative of any kind, or any partnership, firm, association, public
10 or private corporation, limited liability company, nonprofit entity, or any other
11 entity.

12 (M) *RESILIENCY PROJECT* SHALL HAVE THE MEANING SET FORTH IN SECTION 1-1101 OF THE
13 LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

14
15 **Section 20.1201. Program established; administration.**

16 (a) *Established.* There is a Clean Energy Loan Program to finance OR REFINANCE energy
17 efficiency projects and renewable energy projects in accordance with
18 [[section]]SECTION 1-1101, et seq., of the Local Government Article of the
19 Annotated Code of Maryland.

20 (b) *Rules and Regulations.* The Department may adopt rules and regulations to
21 administer the Program consistent with this Subtitle.

22 (c) *Program Administrator.* The County Executive may enter into an agreement with a
23 private entity to administer the Program.

24
25 **Section 20.1202. Scope and eligibility.**

26 (a) *Scope.* [[Commercial property]] PROPERTY owners are eligible to participate in the
27 Program for nonaccelerating loans ~~greater than [[~~\$15,000.00~~]]\$50,000.00~~ [[for a
28 term of up to 20 years]].

29 (b) *Eligibility.* In order to be eligible for a Clean Energy Loan, the property owner shall:

- 30 (1) Have a 100 percent ownership interest in the property located in Howard
31 County for which improvements are proposed;

- 1 (2) [[Obtain an energy audit approved under program guidelines demonstrating that
 2 the energy savings projected to be obtained from the improvements over the
 3 life of the loan equal or exceed the principal and aggregate interest to be paid
 4 over the term of the loan;
- 5 (3)]] Demonstrate that the most recent property tax bill has been paid for the
 6 property;
- 7 ([[4]]3) Provide a copy of written notice to all current holders of a mortgage or
 8 deed of trust who have a priority recorded lien on the property and written
 9 proof of express consent to the loan as a priority lien by all current holders of a
 10 mortgage or deed of trust on the property; and
- 11 ([[5]]4) Establish that the property owner is able to repay the loan PROVIDED
 12 UNDER THE CLEAN ENERGY LOAN PROGRAM, IN A MANNER SUBSTANTIALLY
 13 SIMILAR TO THAT REQUIRED FOR A MORTGAGE LOAN UNDER §§ 12-127, 12-311,
 14 12-409.1, 12-925, AND 12-1029 OF THE COMMERCIAL LAW ARTICLE OF THE
 15 ANNOTATED CODE OF MARYLAND [[based on criteria and methods set forth in
 16 Ann. Code of Md., Commercial Law article, §§ 12-409.1 and 12-925 and any
 17 criteria and methods required by the Clean Energy Lender]].

18

19 **Section 20.1203. Qualifying [[improvements]] PROJECTS and costs.**

20 (a) *Qualifying [[Improvements]]PROJECTS.* The following improvements, either new or
 21 replacement, qualify as RESILIENCY PROJECTS, ENVIRONMENTAL REMEDIATION
 22 PROJECTS, [[an]] energy AND/OR WATER efficiency projects or renewable energy
 23 projects under the Clean Energy Loan Program INCLUDING BUT NOT LIMITED TO:

- 24 (1) Solar energy equipment;
- 25 (2) Geothermal energy devices;
- 26 (3) Wind energy systems;
- 27 (4) Water conservation devices not required by law;
- 28 (5) Any construction, renovation, or retrofitting of commercial property to reduce
 29 energy consumption, including, high efficiency lighting and building systems,
 30 heating ventilation air conditioning (HVAC) upgrades, ~~high efficiency boilers,~~
 31 ~~and furnaces, high efficiency hot water heating systems, combustion and burner~~

1 ~~upgrades~~ HIGH EFFICIENCY ELECTRIC HEATING APPLIANCES, HIGH EFFICIENCY
2 ELECTRIC HOT WATER HEATING SYSTEMS, HIGH EFFICIENCY ELECTRIC COOKING
3 APPLIANCES, fuel switching, heat recovery and steam traps, building shell or
4 envelope improvements, fenestration improvements, building energy
5 management systems, and process equipment upgrades; and

6 (6) Any other improvement approved by the County OR THE PROGRAM
7 ADMINISTRATOR as qualifying as A RESILIENCY PROJECT, ENVIRONMENTAL
8 REMEDIATION PROJECT, an energy AND/OR WATER efficiency project or
9 renewable energy project.

10 (b) *Qualifying Costs.* A Clean Energy Loan may be used to pay for all costs incurred by
11 a property owner [[for the following costs]] in connection with the qualifying
12 improvements INCLUDING, BUT NOT LIMITED TO:

- 13 (1) The cost of the energy audit;
- 14 (2) Feasibility studies and reports;
- 15 (3) The design, installation, and construction of the qualifying improvements;
- 16 (4) Commissioning;
- 17 (5) Energy savings or performance guaranty or insurance; [[and]]
- 18 (6) PROJECT MANAGEMENT;
- 19 (7) BUILDING ACCREDITATION;
- 20 (8) PERMITTING AND ADMINISTRATIVE FEES;
- 21 (9) POST-INSTALLATION EVALUATION, MEASUREMENT AND VERIFICATION; AND
- 22 ([[6]]10) Closing costs of the loan.

23 (C) INELIGIBLE COSTS. ANY APPLIANCES THAT BURN FOSSIL FUELS, EITHER NEW OR
24 REPLACEMENT, DO NOT QUALIFY AS RESILIENCY PROJECTS, ENVIRONMENTAL REMEDIATION
25 PROJECTS, ENERGY AND/OR WATER EFFICIENCY PROJECTS OR RENEWABLE ENERGY
26 PROJECTS UNDER THE CLEAN ENERGY LOAN PROGRAM.

27

28 **Section 20.1204. Real property tax surcharge.**

29 (a) *Repayment of Loans.* A property owner participating in the Clean Energy Loan
30 program shall repay the loan through a surcharge on the owner's real property tax
31 bill. Upon receipt of written notice from the Clean Energy Loan Program

1 Administrator of the execution of a Clean Energy Loan Financing Agreement, the
2 County shall, add the surcharge to the tax property bill on July 1 of the year
3 immediately following the execution of the Agreement. The surcharge shall
4 constitute a first lien on the property from the date it becomes payable until the
5 unpaid surcharge and interest and penalties on the surcharge are paid in full,
6 regardless of a change in ownership, whether voluntary or involuntary. A person that
7 acquires property subject to a surcharge assumes the obligation to pay the surcharge.

8 (b) *Calculation.* The surcharge for a Clean Energy Loan shall include the Clean Energy
9 Loan Obligation and any administrative costs incurred by the County. The included
10 administrative costs shall be the actual expenses incurred to administer the program.

11 (c) *Agreement.* The property owner shall execute an agreement with the County and the
12 Clean Energy Lender that will be recorded in the Land Records of Howard County,
13 at the expense of the owner, and which shall include:

- 14 (1) The date the Clean Energy Loan was made to the property owner and the
15 property became subject to the surcharge;
- 16 (2) The term of the Clean Energy Loan and the surcharge;
- 17 (3) The amount of the Clean Energy Loan Obligation and estimated county
18 administrative costs for the first year;
- 19 (4) The annual principal and interest amount for each year of the term of the loan,
20 including any partial year prorated amounts;
- 21 (5) The prepayment requirements and any prepayment premium that may apply, if
22 the loan is a prepayable Clean Energy Loan;
- 23 (6) Agreement by the property owner to repay all Clean Energy Loan Obligations
24 and the county's administrative costs through a surcharge included on the
25 owner's real property tax bill due and payable on the same date as the real
26 property tax bill;
- 27 (7) Acknowledgement by the property owner that an unpaid Clean Energy Loan
28 surcharge constitutes a first lien on the property that has priority over prior or
29 subsequent liens in favor of private parties, and that the surcharge will continue
30 as a lien on the property from the date it becomes payable until the unpaid

1 surcharge and interest and penalties on the surcharge are paid in full, regardless
2 of a change in ownership of the property, whether voluntary or involuntary;

3 (8) Acknowledgement by the property owner and the lender that the County has no
4 liability for the Clean Energy Loan Obligation or any costs associated with the
5 collection of amounts due under the Clean Energy Financing Agreement; and

6 (9) Acknowledgement by the property owner that an overdue surcharge shall be
7 collected pursuant to Ann. Code of Md., Tax-Property article, title 14, subtitle 8
8 and section 20.140 of this Code.

9 (d) *Default.* If a property owner defaults on the Clean Energy Loan Surcharge, the lien
10 will be collected pursuant to Ann. Code of Md., Tax-Property article, title 14,
11 subtitle 8 and section 20.140 of this Code, irrespective of whether property taxes (or
12 any other taxes, charges or assessments) are due and owing. THE COUNTY SHALL
13 NOT INCUR ANY LIABILITY TO THE CLEAN ENERGY LENDER OR OTHERS IN THE EVENT
14 OF DEFAULT.

15 (e) *Credit of Payments.* Payments received from a property owner shall be credited first
16 to all County taxes, assessments, and charges.

17 (f) *County to Forward Surcharges Collected.* The County shall forward the surcharges
18 to the Clean Energy Lenders, ITS SUCCESSORS OR ASSIGNS, or the Program
19 Administrator within 30 days [[of receipt]] AFTER THE LAST DAY OF THE MONTH IN
20 WHICH SUCH AMOUNTS ARE COLLECTED.

21 (g) *County Liability.* Except for the obligation to forward surcharges under subsection
22 (f) of this section, the County does not incur any liability by participating in the
23 Clean Energy Loan Program and the County shall not incur any liability to the Clean
24 Energy Lender or others in the event of default.

25

26 **Section 20.1205. Financing.**

27 (a) *Private Lenders; Terms.* Any private lender may provide a Clean Energy Loan, and
28 the Clean Energy Financing agreement that evidences the loan may include any
29 terms and conditions permitted by law. THE CLEAN ENERGY LOAN MUST BE REPAYED
30 OVER A TERM NOT TO EXCEED THE USEFUL LIFE OF THE PROJECT AS DETERMINED BY
31 THE PROGRAM.

1 (b) *County Role.* The County's role in the Clean Energy Loan Program is limited to
2 sponsoring the Program and collecting and forwarding the surcharges imposed under
3 the Program. The County may not provide Clean Energy Loans or other financing in
4 connection with the Program.

5
6 ***Section 2. And be it further enacted that the Maryland Clean Energy Center and its***
7 ***designee is hereby authorized and directed to serve as the Clean Energy Loan Program***
8 ***Administrator under the terms of a separate agreement.***

9
10 ***Section 3. And Be It Further Enacted by the County Council of Howard County,***
11 ***Maryland, that this Act shall become effective 61 days after its enactment.***

Amendment 1 to Council Bill No. 3-2023

BY: The Chairperson at the request
of the County Executive

Legislative Day 2
Date: February 6, 2023

Amendment No. 1

(This amendment clarifies that the program is established to also assist in the refinance of projects and removes reference to certain minimum loan amounts.)

- 1 On page 1, in line 24, after "FINANCE" insert "OR REFINANCE".
- 2
- 3 On page 2, in line 14, after "finance" insert "OR REFINANCE".
- 4
- 5 On page 2, in line 24, strike "greater than [[~~\$15,000.00~~]]\$50,000.00".

I certify this is a true copy of
Am 1 to CB3-2023
passed on Feb 6 2023
Michelle Darrat
Council Administrator

It is a very good example of a very good system.
The system is very good and it is very good.
The system is very good and it is very good.
The system is very good and it is very good.
The system is very good and it is very good.

Amendment 2 to Council Bill No. 3-2023

BY: Liz Walsh

Legislative Day No. 2
Date: February 6, 2023

Amendment No. 2

(This Amendment makes appliances that burn fossil fuels ineligible for the Clean Energy Loan Program.)

1 On the title page, on the second line of the purpose paragraph, strike “adding” and substitute
2 “amending”.

3

4 On page 3, line 28 through line 30, strike “high efficiency boilers and furnaces, high efficiency
5 hot water heating systems, combustion and burner upgrades,” and substitute “HIGH EFFICIENCY
6 ELECTRIC HEATING APPLIANCES, HIGH EFFICIENCY ELECTRIC HOT WATER HEATING SYSTEMS, HIGH
7 EFFICIENCY ELECTRIC COOKING APPLIANCES,”

8

9 On page 4, after line 20, insert:

10 (C) INELIGIBLE COSTS. ANY APPLIANCES THAT BURN FOSSIL FUELS, EITHER NEW OR REPLACEMENT,
11 DO NOT QUALIFY AS RESILIENCY PROJECTS, ENVIRONMENTAL REMEDIATION PROJECTS, ENERGY
12 AND/OR WATER EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS UNDER THE CLEAN
13 ENERGY LOAN PROGRAM.

I certify this is a true copy of
Am 2 to CB 3-2023
passed on Feb 6, 2023
Michelle Torres
Council Administrator

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on Feb 8, ~~2022~~, 2023

Michelle Harrod
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2022.

Michelle Harrod, Administrator to the County Council

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2023 Legislative Session

Legislative Day No. 1

Bill No. 3 -2023

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending the Clean Energy Loan Program by defining certain terms; amending the scope of eligibility to receive a Clean Energy Loan; adding improvements that are eligible under the Program; adding qualifying costs that are eligible for reimbursement under the Program; clarifying default provisions; amending when surcharges will be collected; setting forth the term by which the Clean Energy Loan shall be repaid; setting forth the Clean Energy Loan Program Administrator; making certain technical corrections; and generally relating to the Clean Energy Loan Program.

Introduced and read first time _____, 2023. Ordered posted and hearing scheduled.

By order _____
Michelle Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2023.

By order _____
Michelle Harrod, Administrator

This Bill was read the third time on _____, 2023 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2023 at ___ a.m./p.m.

By order _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2023

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the
2 Howard County Code is amended as follows:

3 By amending:

4 Title 20. Taxes, charges and fees.

5 Subtitle 12. Clean Energy Loan Program.

6

7 **Title 20. Taxes, charges and fees.**

8 **Subtitle 12. Clean Energy Loan Program**

9

10 **Section 20.1200. Definitions.**

11 In this subtitle, the following words have the meanings indicated:

12 (a) *Clean Energy Financing Agreement* means an agreement between a property owner
13 and a Clean Energy Lender providing for the terms and conditions of a Clean
14 Energy Loan.

15 (b) *Clean Energy Lender* means a private lender providing a Clean Energy Loan.

16 (c) *Clean Energy Loan* means any loan made by a private lender to a property owner
17 under the Clean Energy Loan Program.

18 (D) *CLEAN ENERGY LOAN FINANCING AGREEMENT* MEANS AN AGREEMENT BETWEEN A
19 PROPERTY OWNER AND A CLEAN ENERGY LENDER PROVIDING FOR THE TERMS AND
20 CONDITIONS OF A CLEAN ENERGY LOAN.

21 (E) *CLEAN ENERGY LOAN PROGRAM OR PROGRAM* MEANS THE CLEAN ENERGY LOAN
22 PROGRAM ESTABLISHED UNDER THIS SUBTITLE AND SECTION §1-1101 ET SEQ OF THE
23 LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND TO
24 PROVIDE LOANS TO PROPERTY OWNERS TO FINANCE QUALIFYING PROJECTS.

25 ([[d]]F) *Clean Energy Loan Program Administrator* means any person or entity selected
26 by the county to manage the Clean Energy Loan Program.

27 ([[e]]G) *Clean Energy Loan Obligation* means all indebtedness and obligations of a
28 property owner to a Clean Energy Lender, ITS SUCCESSORS OR ASSIGNS, under a
29 Clean Energy Financing Agreement.

30 ([[f]]H) *Commercial Property* has the meaning stated in the Local Government Article,
31 [[section]]SECTION 1-1101, of the Annotated Code [[Of]]OF Maryland.

1 ([[g]]l) *Department* means the Department of Finance.

2 (j) *ENVIRONMENTAL REMEDIATION PROJECT* SHALL HAVE THE MEANING SET FORTH IN
3 SECTION 1-1101 OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF
4 MARYLAND.

5 ([[h]]k) *Property Owner* means an owner of commercial property.

6 ([[i]]L) *Person* includes an individual, receiver, trustee, guardian, executor, administrator,
7 fiduciary, or representative of any kind, or any partnership, firm, association, public
8 or private corporation, limited liability company, nonprofit entity, or any other
9 entity.

10 (M) *RESILIENCY PROJECT* SHALL HAVE THE MEANING SET FORTH IN SECTION 1-1101 OF THE
11 LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

12
13 **Section 20.1201. Program established; administration.**

14 (a) *Established.* There is a Clean Energy Loan Program to finance energy efficiency
15 projects and renewable energy projects in accordance with [[section]]SECTION 1-
16 1101, et seq., of the Local Government Article of the Annotated Code of Maryland.

17 (b) *Rules and Regulations.* The Department may adopt rules and regulations to
18 administer the Program consistent with this Subtitle.

19 (c) *Program Administrator.* The County Executive may enter into an agreement with a
20 private entity to administer the Program.

21
22 **Section 20.1202. Scope and eligibility.**

23 (a) *Scope.* [[Commercial property]] PROPERTY owners are eligible to participate in the
24 Program for nonaccelerating loans greater than [[[\$15,000.00]]\$50,000.00 [[for a
25 term of up to 20 years]].

26 (b) *Eligibility.* In order to be eligible for a Clean Energy Loan, the property owner shall:

27 (1) Have a 100 percent ownership interest in the property located in Howard
28 County for which improvements are proposed;

29 (2) [[Obtain an energy audit approved under program guidelines demonstrating that
30 the energy savings projected to be obtained from the improvements over the

1 life of the loan equal or exceed the principal and aggregate interest to be paid
2 over the term of the loan;

3 (3)] Demonstrate that the most recent property tax bill has been paid for the
4 property;

5 ([[4]]3) Provide a copy of written notice to all current holders of a mortgage or
6 deed of trust who have a priority recorded lien on the property and written
7 proof of express consent to the loan as a priority lien by all current holders of a
8 mortgage or deed of trust on the property; and

9 ([[5]]4) Establish that the property owner is able to repay the loan PROVIDED
10 UNDER THE CLEAN ENERGY LOAN PROGRAM, IN A MANNER SUBSTANTIALLY
11 SIMILAR TO THAT REQUIRED FOR A MORTGAGE LOAN UNDER §§ 12-127, 12-311,
12 12-409.1, 12-925, AND 12-1029 OF THE COMMERCIAL LAW ARTICLE OF THE
13 ANNOTATED CODE OF MARYLAND [[based on criteria and methods set forth in
14 Ann. Code of Md., Commercial Law article, §§ 12-409.1 and 12-925 and any
15 criteria and methods required by the Clean Energy Lender]].

16
17 **Section 20.1203. Qualifying [[improvements]] PROJECTS and costs.**

18 (a) *Qualifying [[Improvements]]PROJECTS.* The following improvements, either new or
19 replacement, qualify as RESILIENCY PROJECTS, ENVIRONMENTAL REMEDIATION
20 PROJECTS, [[an]] energy AND/OR WATER efficiency projects or renewable energy
21 projects under the Clean Energy Loan Program INCLUDING BUT NOT LIMITED TO:

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- 23 (2) Geothermal energy devices;
- 24 (3) Wind energy systems;
- 25 (4) Water conservation devices not required by law;
- 26 (5) Any construction, renovation, or retrofitting of commercial property to reduce
27 energy consumption, including, high efficiency lighting and building systems,
28 heating ventilation air conditioning (HVAC) upgrades, high efficiency boilers
29 and furnaces, high efficiency hot water heating systems, combustion and burner
30 upgrades, fuel switching, heat recovery and steam traps, building shell or

1 envelope improvements, fenestration improvements, building energy
2 management systems, and process equipment upgrades; and
3 (6) Any other improvement approved by the County OR THE PROGRAM
4 ADMINISTRATOR as qualifying as A RESILIENCY PROJECT, ENVIRONMENTAL
5 REMEDIATION PROJECT, an energy AND/OR WATER efficiency project or
6 renewable energy project.

7 (b) *Qualifying Costs.* A Clean Energy Loan may be used to pay for all costs incurred by
8 a property owner [[for the following costs]] in connection with the qualifying
9 improvements INCLUDING, BUT NOT LIMITED TO:

- 10 (1) The cost of the energy audit;
- 11 (2) Feasibility studies and reports;
- 12 (3) The design, installation, and construction of the qualifying improvements;
- 13 (4) Commissioning;
- 14 (5) Energy savings or performance guaranty or insurance; [[and]]
- 15 (6) PROJECT MANAGEMENT;
- 16 (7) BUILDING ACCREDITATION;
- 17 (8) PERMITTING AND ADMINISTRATIVE FEES;
- 18 (9) POST-INSTALLATION EVALUATION, MEASUREMENT AND VERIFICATION; AND
- 19 ([[6]]10) Closing costs of the loan.

20
21 **Section 20.1204. Real property tax surcharge.**

22 (a) *Repayment of Loans.* A property owner participating in the Clean Energy Loan
23 program shall repay the loan through a surcharge on the owner's real property tax
24 bill. Upon receipt of written notice from the Clean Energy Loan Program
25 Administrator of the execution of a Clean Energy Loan Financing Agreement, the
26 County shall, add the surcharge to the tax property bill on July 1 of the year
27 immediately following the execution of the Agreement. The surcharge shall
28 constitute a first lien on the property from the date it becomes payable until the
29 unpaid surcharge and interest and penalties on the surcharge are paid in full,
30 regardless of a change in ownership, whether voluntary or involuntary. A person that
31 acquires property subject to a surcharge assumes the obligation to pay the surcharge.

1 (b) *Calculation.* The surcharge for a Clean Energy Loan shall include the Clean Energy
2 Loan Obligation and any administrative costs incurred by the County. The included
3 administrative costs shall be the actual expenses incurred to administer the program.

4 (c) *Agreement.* The property owner shall execute an agreement with the County and the
5 Clean Energy Lender that will be recorded in the Land Records of Howard County,
6 at the expense of the owner, and which shall include:

- 7 (1) The date the Clean Energy Loan was made to the property owner and the
8 property became subject to the surcharge;
- 9 (2) The term of the Clean Energy Loan and the surcharge;
- 10 (3) The amount of the Clean Energy Loan Obligation and estimated county
11 administrative costs for the first year;
- 12 (4) The annual principal and interest amount for each year of the term of the loan,
13 including any partial year prorated amounts;
- 14 (5) The prepayment requirements and any prepayment premium that may apply, if
15 the loan is a prepayable Clean Energy Loan;
- 16 (6) Agreement by the property owner to repay all Clean Energy Loan Obligations
17 and the county's administrative costs through a surcharge included on the
18 owner's real property tax bill due and payable on the same date as the real
19 property tax bill;
- 20 (7) Acknowledgement by the property owner that an unpaid Clean Energy Loan
21 surcharge constitutes a first lien on the property that has priority over prior or
22 subsequent liens in favor of private parties, and that the surcharge will continue
23 as a lien on the property from the date it becomes payable until the unpaid
24 surcharge and interest and penalties on the surcharge are paid in full, regardless
25 of a change in ownership of the property, whether voluntary or involuntary;
- 26 (8) Acknowledgement by the property owner and the lender that the County has no
27 liability for the Clean Energy Loan Obligation or any costs associated with the
28 collection of amounts due under the Clean Energy Financing Agreement; and
- 29 (9) Acknowledgement by the property owner that an overdue surcharge shall be
30 collected pursuant to Ann. Code of Md., Tax-Property article, title 14, subtitle 8
31 and section 20.140 of this Code.

1 (d) *Default.* If a property owner defaults on the Clean Energy Loan Surcharge, the lien
2 will be collected pursuant to Ann. Code of Md., Tax-Property article, title 14,
3 subtitle 8 and section 20.140 of this Code, irrespective of whether property taxes (or
4 any other taxes, charges or assessments) are due and owing. THE COUNTY SHALL
5 NOT INCUR ANY LIABILITY TO THE CLEAN ENERGY LENDER OR OTHERS IN THE EVENT
6 OF DEFAULT.

7 (e) *Credit of Payments.* Payments received from a property owner shall be credited first
8 to all County taxes, assessments, and charges.

9 (f) *County to Forward Surcharges Collected.* The County shall forward the surcharges
10 to the Clean Energy Lenders, ITS SUCCESSORS OR ASSIGNS, or the Program
11 Administrator within 30 days [[of receipt]] AFTER THE LAST DAY OF THE MONTH IN
12 WHICH SUCH AMOUNTS ARE COLLECTED.

13 (g) *County Liability.* Except for the obligation to forward surcharges under subsection
14 (f) of this section, the County does not incur any liability by participating in the
15 Clean Energy Loan Program and the County shall not incur any liability to the Clean
16 Energy Lender or others in the event of default.

17
18 **Section 20.1205. Financing.**

19 (a) *Private Lenders; Terms.* Any private lender may provide a Clean Energy Loan, and
20 the Clean Energy Financing agreement that evidences the loan may include any
21 terms and conditions permitted by law. THE CLEAN ENERGY LOAN MUST BE REPAYED
22 OVER A TERM NOT TO EXCEED THE USEFUL LIFE OF THE PROJECT AS DETERMINED BY
23 THE PROGRAM.

24 (b) *County Role.* The County's role in the Clean Energy Loan Program is limited to
25 sponsoring the Program and collecting and forwarding the surcharges imposed under
26 the Program. The County may not provide Clean Energy Loans or other financing in
27 connection with the Program.

28
29 **Section 2. And be it further enacted that the Maryland Clean Energy Center and its**
30 *designee is hereby authorized and directed to serve as the Clean Energy Loan Program*
31 *Administrator under the terms of a separate agreement.*

1

2 *Section 3. And Be It Further Enacted by the County Council of Howard County,*
3 *Maryland, that this Act shall become effective 61 days after its enactment.*



Howard County
Internal Memorandum

Subject: Testimony on Council Bill No. _____-2023, a Resolution expanding the Commercial Property Assessed Clean Energy (C-PACE) program to include additional categories of eligible projects and to provide additional flexibility for property owners and lenders participating in the program.

To: Lonnie Robbins, Chief Administrative Officer

From: Joshua Feldmark, Administrator, Office of Community Sustainability
J. Feldmark

Date: December 20, 2022

Summary

Bill _____-2023 updates Howard County's Clean Energy Loan Program to include new qualifying projects and costs and to provide additional flexibility for property owners and lenders participating in the program.

Background

Commercial Property Assessed Clean Energy (C-PACE) is a powerful tool for financing commercial property improvements that also benefit the community by saving energy, reducing greenhouse gas emissions, increasing resiliency to climate change impacts, protecting human health, and creating jobs. Howard County adopted C-PACE in 2016 and it is reflected in code in Section 20.1200, Clean Energy Loan Program.

C-PACE is an excellent program for all parties. It provides strong security for investors because the financing is repaid on the property tax bill. This allows lenders to offer better interest rates and longer repayment terms than otherwise available.

Property owners receive 100 percent fixed rate financing of eligible hard and soft costs from private C-PACE lenders, with zero down payment and long payback periods, allowing building owners to be cash flow positive typically from day one. This financing allows property owners to implement energy and water efficiency, renewable energy, resiliency, stormwater management, and environmental remediation projects that help them save money on operating costs while



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reducing greenhouse gas emissions. These projects are also a great way to improve occupant comfort and safety, which often improves property values. C-PACE also encourages more commercial property owners to make these types of investments in their property. Property owners who may consider selling the property in the future are incentivized to pursue these types of improvements because if they sell the property before the C-PACE loan is repaid, the new property owner takes over the loan payments. This makes sense because the new property owner also will benefit from lower operating costs and other C-PACE qualifying project benefits. Building owners also could potentially pass the financing costs to tenants if the tenants pay the utility bills but the owner finances the upgrades. It allows business owners to claim tax credits for solar and other projects.

Howard County also benefits. The energy and water efficiency, renewable energy, EV charging infrastructure, and resiliency measures installed through C-PACE financing will help Howard County achieve its goal to reduce greenhouse gas emissions 60 percent by 2030 and to achieve net zero emissions by 2045.

In 2021, the Maryland General Assembly enacted legislation to modify the existing C-PACE statute, expanding the program to allow environmental remediation and resiliency measures for the first time. This is great for commercial property owners and for the people who live and work in Howard County because it opens up new and favorable financing to improve indoor air quality, remove lead paint, remediate asbestos and mold, and other actions that improve human health and safety. It also allows for financing of resiliency projects, including flood mitigation, stormwater management, and increased fire and wind resistance. These resiliency projects are critical to avoid or reduce damage from floods, severe storms, and extreme temperatures, all of which are expected to increase dramatically over the next decade due to climate change. It also allows for electric vehicle charging infrastructure. In addition, previously financed projects can refinance eligible measures with C-PACE and take out cash.

These are wonderful improvements to the Maryland C-PACE program, but Howard County businesses cannot secure C-PACE financing for resiliency, environmental remediation, or refinancing until we update Howard County code.

Bill _____-2023 is critical to support a thriving C-PACE program in Howard County. In addition to expanding the types of qualifying projects, it also allows C-PACE loans to cover soft costs, such as project management, permitting and administration fees, and building accreditation.

The bill also includes some additional changes to the code that remove unnecessary barriers to obtaining C-PACE financing for certain types of projects and to provide additional flexibility in the program. These improvements include:



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- Removing the \$15,000 loan minimum in the ordinance. This is proposed because most lending institutions will not finance projects under \$100,000. Including a \$15,000 minimum in code sets up unrealistic expectations about availability of capital for small projects.
- Removing the 20-year limit for the loan term from code. Including a 20-year term limits the ability to reduce the property owner's annual payments that a longer term would allow. In addition, there are many improvements that qualify for C-PACE financing but that have a longer useful life than 20 years, such as chillers, boilers, and microgrids.
- Removing the requirement that the lifetime costs savings of the project is greater than the total loan amount. This restricts funding for good projects that have important benefits beyond savings, such as improving building resiliency and human health. Projects that focus on these benefits may not be able to show enough energy savings over the project life to cover the costs to make the improvements.

The Maryland C-PACE Program, or MDPACE, is sponsored by the Maryland Clean Energy Center, an instrumentality of the state of Maryland, and is administered by Abacus Property Solutions. The MDPACE program has been designed to ease the burden of C-PACE administration for counties that want to offer C-PACE financing. MCEC administers the MDPACE program within the county at no cost to the county government. This includes the intake, review, and approval of C-PACE projects; training local contractors and registering private capital providers with the program; providing annual program reports to the county; establishing procedures to place C-PACE surcharges and facilitate collections; and overseeing the remittance of C-PACE surcharge payments to capital providers. The majority of Maryland counties belong to MDPACE, including Allegany, Anne Arundel, Baltimore, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Anne's, Talbot, and Wicomico. Montgomery County and Prince George's County administer their own C-PACE program.

Howard County entered into an agreement with the Maryland Clean Energy Center in 2016 for MCEC and its contracted program administrator to run the program for Howard County. In 2022, Howard County signed a new agreement with MCEC as the first agreement had expired.

Howard County's only obligations under C-PACE are to sign the Surcharge of Levy and Lien agreement between the County, the lender, and the property owner. Then Howard County bills and collects the C-PACE payment on the property tax bill and passes the loan payment to MDPACE, who then disperses payment to the lender and any other parties. Howard County collects its recordation fee on any C-PACE. On a typical C-PACE loan of \$5 million dollars, the County would collect \$25,000 to administer the program.

Fiscal Impact

Processing each loan does come with a fiscal impact primarily of staff time to review and execute agreements, add the C-PACE fee as needed to property tax bills, collect the property tax, and disperse C-PACE payments. However, each C-PACE loan is subject to Howard County's recordation tax of \$2.50 per \$500 rounded up to the next \$500, which is roughly the equivalent of 0.5% of the total amount of the loan. The recordation tax will adequately cover any added costs to the County. Therefore, the fiscal impact to the County is de minimis.