

Introduced \_\_\_\_\_  
Public Hearing \_\_\_\_\_  
Council Action \_\_\_\_\_  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council Of Howard County, Maryland

2016 Legislative Session

Legislative Day No. 1

### Bill No. 4 -2016

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

AN ACT for the purpose of defining certain terms; establishing a Clean Energy Loan Program for commercial property owners; establishing the scope of and eligibility for the Clean Energy Loan Program; providing for qualifying criteria; establishing a calculation of the clean energy loan surcharge; providing for a recorded agreement and certain notices; providing for the collection of loan payments; establishing default procedures; providing for financing of a loan under the Program; providing for the application of this Ordinance; and generally related to the Clean Energy Loan Program and real property taxes.

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Introduced and read first time \_\_\_\_\_, 2016. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Jessica Feldmark, 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 \_\_\_\_\_, 2016.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

This Bill was read the third time on \_\_\_\_\_, 2016 and Passed \_\_\_\_, Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this \_\_\_ day of \_\_\_\_\_, 2016 at \_\_\_ a.m./p.m.

By order \_\_\_\_\_  
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive \_\_\_\_\_, 2016

\_\_\_\_\_  
Allan H. Kittleman, 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 Howard  
2 County Code is amended as follows:

3  
4 By adding 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 **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  
13 OWNER 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 PROGRAM ADMINISTRATOR*" MEANS ANY PERSON OR ENTITY SELECTED BY  
19 THE COUNTY TO MANAGE THE CLEAN ENERGY LOAN PROGRAM.

20 (E) "*CLEAN ENERGY LOAN OBLIGATION*" MEANS ALL INDEBTEDNESS AND OBLIGATIONS OF A  
21 PROPERTY OWNER TO A CLEAN ENERGY LENDER UNDER A CLEAN ENERGY FINANCING  
22 AGREEMENT.

23 (F) "*COMMERCIAL PROPERTY*" HAS THE MEANING STATED IN THE LOCAL GOVERNMENT ARTICLE,  
24 SECTION 1-1101, OF THE ANNOTATED CODE OF MARYLAND.

25 (G) "*DEPARTMENT*" MEANS THE DEPARTMENT OF FINANCE.

26 (H) "*PROPERTY OWNER*" MEANS AN OWNER OF COMMERCIAL PROPERTY.

27 (I) "*PERSON*" INCLUDES AN INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN, EXECUTOR,  
28 ADMINISTRATOR, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND, OR ANY PARTNERSHIP, FIRM,  
29 ASSOCIATION, PUBLIC OR PRIVATE CORPORATION, LIMITED LIABILITY COMPANY, NONPROFIT  
30 ENTITY, OR ANY OTHER ENTITY.

31

1 **SECTION 20.1201. PROGRAM ESTABLISHED; ADMINISTRATION.**

2 (A) *ESTABLISHED.* THERE IS A CLEAN ENERGY LOAN PROGRAM TO FINANCE ENERGY EFFICIENCY  
3 PROJECTS AND RENEWABLE ENERGY PROJECTS IN ACCORDANCE WITH SECTION 1-1101, *ET SEQ.* OF  
4 THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

5 (B) *RULES AND REGULATIONS.* THE DEPARTMENT MAY ADOPT RULES AND REGULATIONS TO  
6 ADMINISTER THE PROGRAM CONSISTENT WITH THIS SUBTITLE.

7 (C) *PROGRAM ADMINISTRATOR.* THE COUNTY EXECUTIVE MAY ENTER INTO AN AGREEMENT WITH A  
8 PRIVATE ENTITY TO ADMINISTER THE PROGRAM.

9

10 **SECTION 20.1202. SCOPE AND ELIGIBILITY.**

11 (A) *SCOPE.* COMMERCIAL PROPERTY OWNERS ARE ELIGIBLE TO PARTICIPATE IN THE PROGRAM FOR  
12 NONACCELERATING LOANS GREATER THAN \$15,000 FOR A TERM OF UP TO 20 YEARS.

13 (B) *ELIGIBILITY.* IN ORDER TO BE ELIGIBLE FOR A CLEAN ENERGY LOAN, THE PROPERTY OWNER  
14 SHALL:

15 (1) HAVE A 100% OWNERSHIP INTEREST IN THE PROPERTY LOCATED IN HOWARD  
16 COUNTY FOR WHICH IMPROVEMENTS ARE PROPOSED;

17 (2) OBTAIN AN ENERGY AUDIT APPROVED UNDER PROGRAM GUIDELINES  
18 DEMONSTRATING THAT THE ENERGY SAVINGS PROJECTED TO BE OBTAINED FROM  
19 THE IMPROVEMENTS OVER THE LIFE OF THE LOAN EQUAL OR EXCEED THE PRINCIPAL  
20 AND AGGREGATE INTEREST TO BE PAID OVER THE TERM OF THE LOAN;

21 (3) DEMONSTRATE THAT THE MOST RECENT PROPERTY TAX BILL HAS BEEN PAID FOR  
22 THE PROPERTY;

23 (4) PROVIDE A COPY OF WRITTEN NOTICE TO ALL CURRENT HOLDERS OF A MORTGAGE  
24 OR DEED OF TRUST WHO HAVE A PRIORITY RECORDED LIEN ON THE PROPERTY AND  
25 WRITTEN PROOF OF EXPRESS CONSENT TO THE LOAN AS A PRIORITY LIEN BY ALL  
26 CURRENT HOLDERS OF A MORTGAGE OR DEED OF TRUST ON THE PROPERTY; AND

27 (5) ESTABLISH THAT THE PROPERTY OWNER IS ABLE TO REPAY THE LOAN BASED ON  
28 CRITERIA AND METHODS SET FORTH IN SECTIONS 12-409.1 AND 12-925 OF THE  
29 COMMERCIAL LAW ARTICLE OF THE ANNOTATED CODE OF MARYLAND AND ANY  
30 CRITERIA AND METHODS REQUIRED BY THE CLEAN ENERGY LENDER.

31

1 **SECTION 20.1203. QUALIFYING IMPROVEMENTS AND COSTS.**

2 (A) *QUALIFYING IMPROVEMENTS.* THE FOLLOWING IMPROVEMENTS, EITHER NEW OR REPLACEMENT,  
3 QUALIFY AS ENERGY EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS UNDER THE CLEAN  
4 ENERGY LOAN PROGRAM:

- 5 (1) SOLAR ENERGY EQUIPMENT;
- 6 (2) GEOTHERMAL ENERGY DEVICES;
- 7 (3) WIND ENERGY SYSTEMS;
- 8 (4) WATER CONSERVATION DEVICES NOT REQUIRED BY LAW;
- 9 (5) ANY CONSTRUCTION, RENOVATION, OR RETROFITTING OF COMMERCIAL PROPERTY  
10 TO REDUCE ENERGY CONSUMPTION, INCLUDING, HIGH EFFICIENCY LIGHTING AND  
11 BUILDING SYSTEMS, HEATING VENTILATION AIR CONDITIONING (HVAC) UPGRADES,  
12 HIGH EFFICIENCY BOILERS AND FURNACES, HIGH EFFICIENCY HOT WATER HEATING  
13 SYSTEMS, COMBUSTION AND BURNER UPGRADES, FUEL SWITCHING, HEAT  
14 RECOVERY AND STEAM TRAPS, BUILDING SHELL OR ENVELOPE IMPROVEMENTS,  
15 FENESTRATION IMPROVEMENTS, BUILDING ENERGY MANAGEMENT SYSTEMS, AND  
16 PROCESS EQUIPMENT UPGRADES; AND
- 17 (6) ANY OTHER IMPROVEMENT APPROVED BY THE COUNTY AS QUALIFYING AS AN  
18 ENERGY EFFICIENCY PROJECT OR RENEWABLE ENERGY PROJECT.

19 (B) *QUALIFYING COSTS.* A CLEAN ENERGY LOAN MAY BE USED TO PAY FOR ALL COSTS INCURRED  
20 BY A PROPERTY OWNER FOR THE FOLLOWING COSTS IN CONNECTION WITH THE QUALIFYING  
21 IMPROVEMENTS:

- 22 (1) THE COST OF THE ENERGY AUDIT;
- 23 (2) FEASIBILITY STUDIES AND REPORTS;
- 24 (3) THE DESIGN, INSTALLATION, AND CONSTRUCTION OF THE QUALIFYING  
25 IMPROVEMENTS;
- 26 (4) COMMISSIONING;
- 27 (5) ENERGY SAVINGS OR PERFORMANCE GUARANTY OR INSURANCE; AND
- 28 (6) CLOSING COSTS OF THE LOAN.

29

30 **SECTION 20.1204. REAL PROPERTY TAX SURCHARGE.**

31 (A) *REPAYMENT OF LOANS.* A PROPERTY OWNER PARTICIPATING IN THE CLEAN ENERGY LOAN

1 PROGRAM SHALL REPAY THE LOAN THROUGH A SURCHARGE ON THE OWNER'S REAL PROPERTY TAX  
2 BILL. UPON RECEIPT OF WRITTEN NOTICE FROM THE CLEAN ENERGY LOAN PROGRAM  
3 ADMINISTRATOR OF THE EXECUTION OF A CLEAN ENERGY LOAN FINANCING AGREEMENT, THE  
4 COUNTY SHALL, ADD THE SURCHARGE TO THE TAX PROPERTY BILL ON JULY 1 OF THE YEAR  
5 IMMEDIATELY FOLLOWING THE EXECUTION OF THE AGREEMENT. THE SURCHARGE SHALL  
6 CONSTITUTE A FIRST LIEN ON THE PROPERTY FROM THE DATE IT BECOMES PAYABLE UNTIL THE  
7 UNPAID SURCHARGE AND INTEREST AND PENALTIES ON THE SURCHARGE ARE PAID IN FULL,  
8 REGARDLESS OF A CHANGE IN OWNERSHIP, WHETHER VOLUNTARY OR INVOLUNTARY. A PERSON  
9 THAT ACQUIRES PROPERTY SUBJECT TO A SURCHARGE ASSUMES THE OBLIGATION TO PAY THE  
10 SURCHARGE.

11 (B) *CALCULATION*. THE SURCHARGE FOR A CLEAN ENERGY LOAN SHALL INCLUDE THE CLEAN  
12 ENERGY LOAN OBLIGATION AND ANY ADMINISTRATIVE COSTS INCURRED BY THE COUNTY. THE  
13 INCLUDED ADMINISTRATIVE COSTS SHALL BE THE ACTUAL EXPENSES INCURRED TO ADMINISTER  
14 THE PROGRAM.

15 (C) *AGREEMENT*. THE PROPERTY OWNER SHALL EXECUTE AN AGREEMENT WITH THE COUNTY AND  
16 THE CLEAN ENERGY LENDER THAT WILL BE RECORDED IN THE LAND RECORDS OF HOWARD  
17 COUNTY, AT THE EXPENSE OF THE OWNER, AND WHICH SHALL INCLUDE:

- 18 (1) THE DATE THE CLEAN ENERGY LOAN WAS MADE TO THE PROPERTY OWNER AND  
19 THE PROPERTY BECAME SUBJECT TO THE SURCHARGE;
- 20 (2) THE TERM OF THE CLEAN ENERGY LOAN AND THE SURCHARGE;
- 21 (3) THE AMOUNT OF THE CLEAN ENERGY LOAN OBLIGATION AND ESTIMATED COUNTY  
22 ADMINISTRATIVE COSTS FOR THE FIRST YEAR;
- 23 (4) THE ANNUAL PRINCIPAL AND INTEREST AMOUNT FOR EACH YEAR OF THE TERM OF  
24 THE LOAN, INCLUDING ANY PARTIAL YEAR PRORATED AMOUNTS;
- 25 (5) THE PREPAYMENT REQUIREMENTS AND ANY PREPAYMENT PREMIUM THAT MAY  
26 APPLY, IF THE LOAN IS A PREPAYABLE CLEAN ENERGY LOAN;
- 27 (6) AGREEMENT BY THE PROPERTY OWNER TO REPAY ALL CLEAN ENERGY LOAN  
28 OBLIGATIONS AND THE COUNTY'S ADMINISTRATIVE COSTS THROUGH A SURCHARGE  
29 INCLUDED ON THE OWNER'S REAL PROPERTY TAX BILL DUE AND PAYABLE ON THE  
30 SAME DATE AS THE REAL PROPERTY TAX BILL;
- 31 (7) ACKNOWLEDGEMENT BY THE PROPERTY OWNER THAT AN UNPAID CLEAN ENERGY

1 LOAN SURCHARGE CONSTITUTES A FIRST LIEN ON THE PROPERTY THAT HAS  
2 PRIORITY OVER PRIOR OR SUBSEQUENT LIENS IN FAVOR OF PRIVATE PARTIES, AND  
3 THAT THE SURCHARGE WILL CONTINUE AS A LIEN ON THE PROPERTY FROM THE  
4 DATE IT BECOMES PAYABLE UNTIL THE UNPAID SURCHARGE AND INTEREST AND  
5 PENALTIES ON THE SURCHARGE ARE PAID IN FULL, REGARDLESS OF A CHANGE IN  
6 OWNERSHIP OF THE PROPERTY, WHETHER VOLUNTARY OR INVOLUNTARY;

7 (8) ACKNOWLEDGEMENT BY THE PROPERTY OWNER AND THE LENDER THAT THE  
8 COUNTY HAS NO LIABILITY FOR THE CLEAN ENERGY LOAN OBLIGATION OR ANY  
9 COSTS ASSOCIATED WITH THE COLLECTION OF AMOUNTS DUE UNDER THE CLEAN  
10 ENERGY FINANCING AGREEMENT; AND

11 (9) ACKNOWLEDGEMENT BY THE PROPERTY OWNER THAT AN OVERDUE SURCHARGE  
12 SHALL BE COLLECTED PURSUANT TO TITLE 14, SUBTITLE 8 OF THE TAX-PROPERTY  
13 ARTICLE OF THE ANNOTATED CODE OF MARYLAND AND SECTION 20.140 OF THIS  
14 CODE.

15 (D) *DEFAULT.* IF A PROPERTY OWNER DEFAULTS ON THE CLEAN ENERGY LOAN SURCHARGE, THE  
16 LIEN WILL BE COLLECTED PURSUANT TO TITLE 14, SUBTITLE 8 OF THE TAX-PROPERTY ARTICLE OF  
17 THE ANNOTATED CODE OF MARYLAND AND SECTION 20.140 OF THIS CODE, IRRESPECTIVE OF  
18 WHETHER PROPERTY TAXES (OR ANY OTHER TAXES, CHARGES OR ASSESSMENTS) ARE DUE AND  
19 OWING.

20 (E) *CREDIT OF PAYMENTS.* PAYMENTS RECEIVED FROM A PROPERTY OWNER SHALL BE CREDITED  
21 FIRST TO ALL COUNTY TAXES, ASSESSMENTS, AND CHARGES.

22 (F) *COUNTY TO FORWARD SURCHARGES COLLECTED.* THE COUNTY SHALL FORWARD THE  
23 SURCHARGES TO THE CLEAN ENERGY LENDERS OR THE PROGRAM ADMINISTRATOR WITHIN 30  
24 DAYS OF RECEIPT.

25 (G) *COUNTY LIABILITY.* EXCEPT FOR THE OBLIGATION TO FORWARD SURCHARGES UNDER  
26 SUBSECTION (F) OF THIS SECTION, THE COUNTY DOES NOT INCUR ANY LIABILITY BY PARTICIPATING  
27 IN THE CLEAN ENERGY LOAN PROGRAM AND THE COUNTY SHALL NOT INCUR ANY LIABILITY TO  
28 THE CLEAN ENERGY LENDER OR OTHERS IN THE EVENT OF DEFAULT.

29  
30 **SECTION 20.1205. FINANCING.**

31 (A) *PRIVATE LENDERS; TERMS.* ANY PRIVATE LENDER MAY PROVIDE A CLEAN ENERGY LOAN, AND

1 THE CLEAN ENERGY FINANCING AGREEMENT THAT EVIDENCES THE LOAN MAY INCLUDE ANY  
2 TERMS AND CONDITIONS PERMITTED BY LAW.

3 (B) *COUNTY ROLE.* THE COUNTY'S ROLE IN THE CLEAN ENERGY LOAN PROGRAM IS LIMITED TO  
4 SPONSORING THE PROGRAM AND COLLECTING AND FORWARDING THE SURCHARGES IMPOSED  
5 UNDER THE PROGRAM. THE COUNTY MAY NOT PROVIDE CLEAN ENERGY LOANS OR OTHER  
6 FINANCING IN CONNECTION WITH THE PROGRAM.

7

8 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland that  
9 *this Act shall apply to any commercial property for which a Clean Energy Loan was financed on*  
10 *or after July 1, 2016.*

11

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