



Bill No. 16-17

Concerning: Establishing a Clean Energy
Loan Program for Commercial Properties

Introduced: August 30, 2016

Revised: Oct. 4, 2016 Draft No. _____

Enacted: _____

Effective: _____

Expires: _____

Frederick County Code, Chapter 1-8

Section(s) 451-456

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President Bud Otis on behalf of County Executive Jan Gardner

AN ACT to: 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.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-8 Section(s) 451 through 456

Other: _____

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

Bill No. _____

The County Council of Frederick County, Maryland, finds it necessary and appropriate to add Chapter 1-8-451 et seq to the Frederick County Code for the purpose of defining certain terms; establishing a Clean Energy Loan Program for commercial property owners; establishing the scope of and eligibility for a Clean Energy Loan Program; providing for qualifying criteria; establishing a calculation of a 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.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

Harold F. (Bud) Otis, President
County Council of Frederick County,
Maryland

Chapter 1-8: FINANCE AND TAXATION

ARTICLE XIV: COMMERCIAL CLEAN ENERGY LOAN PROGRAM.

§ 1-8-451 DEFINITIONS.

CLEAN ENERGY FINANCING AGREEMENT. An agreement between a commercial property owner and a clean energy lender providing for the terms and conditions of a clean energy loan.

CLEAN ENERGY LENDER. A private lender providing a clean energy loan.

CLEAN ENERGY LOAN. Any loan, originating on or after the effective date of this Bill, made by a private lender to a property owner under the clean energy loan program.

CLEAN ENERGY LOAN PROGRAM ADMINISTRATOR. Any person or entity selected by the County to manage the clean energy loan program.

CLEAN ENERGY LOAN OBLIGATION. All indebtedness and obligations of a property owner to a clean energy lender under a clean energy financing agreement.

COMMERCIAL PROPERTY. Has the meaning stated in the Local Government Article, Section 1-1101, of the Annotated Code of Maryland.

DIVISION. The Frederick County Division of Finance.

PERSON. Includes an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, limited liability company, nonprofit entity, or any other entity.

PROGRAM. The Clean Energy Loan Program established by this Bill.

PROPERTY OWNER. An owner of commercial property.

§ 1-8-452 PROGRAM ESTABLISHED; ADMINISTRATION.

_____ (A) *Established.* There is hereby established a Clean Energy Loan Program to finance energy efficiency projects and renewable energy projects on and for commercial properties in accordance with Section 1-1101, *et seq.* of the Local Government Article of the Annotated Code of Maryland.

_____ (B) *Rules and Regulations.* The Division may adopt rules and regulations to administer the Program consistent with this subtitle.

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

§ 1-8-453 SCOPE AND ELIGIBILITY.

_____ (A) *Scope.* Property owners are eligible to participate in the Program for non-accelerating loans greater than \$15,000 for a term of up to 20 years.

_____ (B) *Eligibility.* In order to be eligible for a clean energy loan, the property owner shall:

_____ (1) Have a 100% ownership interest in the commercial property located in Frederick County for which improvements are proposed;

_____ (2) Obtain an energy audit approved under program guidelines demonstrating that the energy savings projected to be obtained from the improvements over the life of the loan equal or exceed the principal and aggregate interest to be paid over the term of the loan;

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

_____ (4) Provide a copy of written notice to all current holders of a mortgage or deed of trust who have a priority recorded lien on the property and written proof of express

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consent to the loan as a priority lien by all current holders of a mortgage or deed of trust on the property; and

(5) Establish that the property owner is able to repay the loan based on criteria and methods set forth in Sections 12-127, 12-311, 12-409.1, 12-925 and 12-1029 of the Commercial Law Article of the Annotated Code of Maryland and any criteria and methods required by the clean energy lender.

§ 1-8-454 QUALIFYING IMPROVEMENTS AND COSTS.

(A) *Qualifying Improvements.* The following improvements, either new or replacement, to commercial properties qualify as energy efficiency projects or renewable energy projects under the Clean Energy Loan Program:

(1) Solar energy equipment;

(2) Geothermal energy devices;

(3) Wind energy systems;

(4) Water conservation devices not required by law;

(5) Any construction, renovation, or retrofitting of commercial property to reduce energy consumption, including, high efficiency lighting and building systems, heating ventilation air conditioning (HVAC) upgrades, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, building shell or envelope improvements, fenestration improvements, building energy management systems, and process equipment upgrades; and

(6) Any other improvement approved by the County as qualifying as an energy efficiency project or renewable energy project.

(B) *Qualifying Costs.* A clean energy loan may be used to pay for all costs incurred by a property owner for the following costs in connection with the qualifying improvements:

- (1) The cost of the energy audit;
- (2) Feasibility studies and reports;
- (3) The design, installation, and construction of the qualifying improvements;
- (4) Commissioning;
- (5) Energy savings or performance guaranty or insurance; and
- (6) Closing costs of the loan.

§ 1-8-455 REAL PROPERTY TAX SURCHARGE.

(A) *Repayment of Loans.* A property owner participating in the Clean Energy Loan Program shall repay the loan through a surcharge on the owner's real property tax bill. Upon receipt of written notice from the Clean Energy Loan Program administrator of the execution of a clean energy loan financing agreement, the County shall, add the surcharge to the tax property bill on July 1 of the year immediately following the execution of the agreement. The surcharge shall constitute a first lien on the property from the date it becomes payable until the unpaid surcharge and interest and penalties on the surcharge are paid in full, regardless of a change in ownership, whether voluntary or involuntary. A person that acquires property subject to a Clean Energy Loan Program surcharge assumes the obligation to pay the surcharge.

(B) *Calculation.* The surcharge for a clean energy loan shall include the clean energy loan obligation and any administrative costs incurred by the County. The included administrative costs shall be the actual expenses incurred to administer the program.

(C) *Agreement.* The property owner must execute an agreement with the County and

the clean energy lender that will be recorded in the land records of Frederick County, at the expense of the owner, and which shall include:

(1) The date the clean energy loan was made to the property owner and the property became subject to the surcharge;

(2) The term of the clean energy loan and the surcharge;

(3) The amount of the clean energy loan obligation and estimated county administrative costs for the first year;

(4) The annual principal and interest amount for each year of the term of the loan, including any partial year prorated amounts;

(5) The prepayment requirements and any prepayment premium that may apply, if the loan is a pre-payable clean energy loan;

(6) Agreement by the property owner to repay all clean energy loan obligations and the county's administrative costs through a surcharge included on the owner's real property tax bill due and payable on the same date as the real property tax bill;

(7) Acknowledgement by the property owner that an unpaid clean energy loan surcharge constitutes a first lien on the property that has priority over prior or subsequent liens in favor of private parties, and that the surcharge will continue as a lien on the property from the date it becomes payable until the unpaid surcharge and interest and penalties on the surcharge are paid in full, regardless of a change in ownership of the property, whether voluntary or involuntary;

(8) Acknowledgement by the property owner and the lender that the County has no liability for the clean energy loan obligation or any costs associated with the collection of amounts due under the clean energy financing agreement; and

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(9) Acknowledgement by the property owner that an overdue surcharge shall be collected pursuant to Title 14, Subtitle 8 of the Tax-Property Article of the Annotated Code of Maryland and Chapter 2-7: Finance and Taxation, Article V: Tax Sales of this Code.

(D) Default. If a property owner defaults on the clean energy loan surcharge, the lien will be collected pursuant to Title 14, Subtitle 8 of the Tax-Property Article of the Annotated Code of Maryland and Chapter 2-7 of this Code, irrespective of whether property taxes or any other taxes, charges or assessments are due and owing.

(E) Credit of Payments. Payments received from a property owner and from the sale of a property where a clean energy loan is in default shall be credited first to all County and other political subdivision taxes, assessments, and charges before being credited towards outstanding clean energy loan surcharges and balances.

(F) County to Forward Surcharges Collected. The County shall forward collected surcharges to the clean energy lenders or the Program administrator within 60 days of receipt.

(G) County Liability. Except for the obligation to forward surcharges under Subsection (f) of this Section, the County does not incur any liability by participating in the Clean Energy Loan Program and the County is not liable to the clean energy lender, the Program administrator, the property owner or to others in the event of the property owner's default.

§ 1-8-456 FINANCING.

(A) Private Lenders; Terms. Any private lender may provide a clean energy loan, and the clean energy financing agreement that evidences the loan may include any terms and conditions permitted by law.

(B) County Role. The County's role in the Clean Energy Loan Program is limited to

sponsoring the Program and collecting and forwarding the surcharges imposed under the Program. The County may not provide clean energy loans or other financing in connection with the Program.

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