



Bill No. 16-17
Concerning: Establishing a Clean Energy
Loan Program for Commercial Properties
Introduced: August 30, 2016
Revised: _____ 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	<i>Heading or defined term.</i>
Underlining	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
Double underlining	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

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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.

Underlining indicates matter added to existing law by original bill.
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§ 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 Underlining indicates matter added to existing law by original bill.

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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.

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(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

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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

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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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FREDERICK COUNTY COUNCIL

Local Government Fiscal Estimate of Legislation

CONTACT INFORMATION AND GENERAL INSTRUCTIONS

Bill Number/Reference:	16-17
Bill Title:	Establishing a Clean Energy Loan Program for Commercial Properties
Local Government Agency:	Frederick County Divisions of Finance and Planning and Permitting
Prepared By:	Diane Fox and Shannon Moore
Title:	Director of Treasury (Division of Finance) and Manager, Office of Sustainability and Environmental Resources (Division of Planning and Permitting)
Phone Number:	301-600-1114, 301-600-1413
E-Mail Address:	dfox@frederickcountymd.gov , smoore@frederickcountymd.gov
Due Date:	September 13, 2016
Date Submitted:	September 13, 2016

FREDERICK COUNTY COUNCIL

Local Government Fiscal Estimate of Legislation

Date: <p>Please respond to the questions below. If you prefer to provide responses or additional information in a separate file or document, send the file or document in a separate e-mail to rcherney@frederickcountymd.gov with the bill number/reference in the subject line.</p>					
1.	Describe the impact of this proposed legislation on your agency (operations, revenues, expenditures, etc). If there is no impact, <u>please explain why</u> .				
<p>The establishment of a Clean Energy Loan Program for commercial property owners will have a negligible impact on the Department of Treasury and the Office of Sustainability and Environmental Resources. Any impacts to the Treasury Department resulting from the adoption of this bill can be adequately accommodated by existing staff levels and operations. In addition, any costs to the Treasury Department resulting from the adoption of the bill will be reimbursed to the County through an application fee. A third party vendor will administer the program and provide the County with a file to upload to the County's tax billing system. The yearly loan payments will then be billed and collected through the annual real estate taxes and fees bill using processes currently in place in Treasury.</p>					
2.	Please indicate whether the proposed legislation will affect small businesses in Frederick County, and if it will, please provide any information you may have which could be useful in determining the economic impact on small businesses.				
<p>This legislation is expected to have a positive impact on small businesses because it will enable them to borrow funds for clean energy projects that they might not otherwise be able to borrow. The projects that these businesses will implement are expected to have a positive return on investment; for example, the owner of a 5 kW solar array might expect an ROI of 20% in the first year/ a five year payback period with returns through the life of the panels. This is much better than standard investment products. Small businesses that provide clean energy services and products also benefit through sales.</p>					
FISCAL IMPACT SUMMARY – SHOW (DECREASE) IN PARENTHESES					
<u>REVENUES</u>					
3.	Analysis of estimated increase (or decrease) in government revenues . Please estimate below any anticipated increase (or decrease) in revenues resulting from this legislation. Please be aware of any delayed effective dates in the bill or other factors that may cause revenue increases/decreases to begin in later years.				
<u>Source</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
N/A					
	TOTAL \$	\$	\$	\$	\$
	Please explain how the above estimated increase(s) or decrease(s) were arrived at, including any calculations and/or assumptions made. Please also explain any variation if the revenue increase(s)/decrease(s) are not constant.				
N/A -- The legislation will have no impact on the revenues of the County. We will receive a small administrative fee to offset costs but cannot estimate that amount at this time.					

FREDERICK COUNTY COUNCIL

Local Government Fiscal Estimate of Legislation

<u>EXPENDITURES</u>						
4.	Analysis of estimated increase (or decrease) in government expenditures . Please estimate below any anticipated increase (or decrease) in expenditures resulting from this legislation. Please be aware of any delayed effective dates in the bill or other factors that may cause expenditure increases/decreases to begin in later years.					
<u>A. Salaries & Wages</u>		<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
FTE Employees - _____ # of positions Fringe Benefits						
TOTAL (Salaries, wages & benefits)		\$	\$	\$	\$	\$
N/A	Please provide an explanation of the need for the number and type of any personnel listed above, including (1) what specific provision(s) of the bill necessitate additional staff; (2) what the duties of each type employee will be; and (3) why existing personnel cannot absorb the additional work. Please also certify the wage/salary rate and % fringe rate (if differing rates apply) for each personnel classification.					
<u>B. Other Operating Expenses</u>		<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
Technical/Special Fees, Grants/Subsidies Communications-Phone, Postage Travel, Food, Auto, Fuel & Utilities Contractual Services Supplies Equipment-Replacement Equipment-Additional Land & Structures, Fixed Charges Other (Please Specify on Extra Page(s))						
TOTAL (Expenditures)		\$	\$	\$	\$	\$
N/A	On the next page, please provide brief descriptions/breakdowns of the above "Other Operating Expenses."					
	Please explain below any additional calculations or assumptions made in estimating the "Other Operating Expenses" that will help us to understand the amounts and timing of the expenses.					
N/A – It is not anticipated that this legislation would create the need for additional staff or increase the operating expenses of the County.						

FREDERICK COUNTY COUNCIL

Local Government Fiscal Estimate of Legislation

4. (cont'd)

C. Operating Expense Descriptions/Breakdowns

Please provide below a short description of the specific purpose of each expense listed under 4B. If any amount(s) listed under 4B represent(s) a total of multiple expenses, provide a breakdown of the fiscal 2016 amount with a short description of each expense (for example, if \$2,500 is listed for Communications – Phone, Postage, a statement such as "\$1,500 for cellphone charges for two new inspectors and \$1,000 for postage for mailings to permittees to notify them of changes to inspection requirements.")

Fiscal 2017 Expenditures

Technical/Special Fees, Grants & Subsidies	\$
description/breakdown	

Communications – Phone, Postage	\$
description/breakdown	

Travel, Food, Auto Operations, Fuel & Utilities	\$
description/breakdown	

Contractual Services	\$
description/breakdown	

Supplies	\$
description/breakdown	

Equipment-Replacement	\$
description/breakdown	

Equipment-Additional	\$
description/breakdown	

Land & Structures, Fixed Charges	\$
description/breakdown	

Other (Please Specify)	\$
description/breakdown	

**Please submit BY E-MAIL to: Ragen Cherney, Legislative Director/Chief of Staff
Frederick County Council • E-Mail: RCherney@FrederickCountyMD.gov**

AMENDMENT 1 to Bill No: 16-17

Introduced By: Council Vice President Keegan-Ayer (District 3)
Introduction Date: October 4, 2015
Adopted/Rejected/Withdrawn: _____

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.

On Page 3, Exhibit 1, Subsection 1-8-453 (B)(2) Amend:

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 life of the loan;

EXPLANATION:

BOLD CAPITALS INDICATE MATTER ADDED TO THE BILL.
[Brackets] indicate matter deleted from the bill.