AGENDA ITEM #2F
November 24, 2009

Action

MEMORANDUM

November 19, 2009

TO: County Council

FROM: Amanda Mihill, Legislative Analyst A. Mihill

SUBJECT: **Action:** Resolution to extend time for transmittal of executive regulations to implement the Home Energy Loan Program

On April 14, 2009, the Council enacted Expedited Bill 6-09, Home Energy Loan Program – Establishment, which the Executive signed. Bill 6-09 established a Home Energy Loan Program to assist single-family homeowners to make an energy efficiency improvement or install a renewable energy device; and established a revolving loan fund to provide homeowners loans under the Program.

Section 2 of Bill 6-09 required the Executive to transmit regulations to implement the Home Energy Loan Program to the Council 6 months after the date Bill 6-09 was enacted, which would have been October 14, 2009, unless the Council granted an extension. On November 6, the Council received a memorandum from the Executive that requested the Council grant an extension of this deadline (©2). The Executive indicated his goal that the Council would receive final regulations by April 15, 2010. The attached draft regulation would extend this deadline to April 15, 2010 (©1).

This packet contains:	Circle
Draft regulation	1
County Executive memorandum	2

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Resolution No. ____________
Introduced: ____________
Adopted: ____________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND

By: County Council

SUBJECT: Resolution to extend time for transmittal of executive regulations to implement the Home Energy Loan Program

Background

1. On April 14, 2009, the Council enacted Expedited Bill 6-09, Home Energy Loan Program – Establishment to establish a Home Energy Loan Program to assist single-family homeowners to make an energy efficiency improvement or install a renewable energy device. After the Executive signed the bill, Expedited Bill 6-09 became Chapter 8 of the 2009 Laws of Montgomery County.

2. Section 2 of Expedited Bill 6-09 required the Executive to adopt and submit regulations to implement the Home Energy Loan Program to the Council by October 14, 2009 unless the Council grants an extension.

3. On November 6, the Council received a memorandum from the Executive requesting an extension of the deadline to submit final regulations. The Executive indicated his goal that final regulations be transmitted to the Council by April 15, 2010.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The Council extends the time for the Executive to transmit executive regulations to implement the Home Energy Loan Program to April 15, 2010.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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BILL 6-09

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2009 NOV -6 PM 3:15

MEMORANDUM

November 4, 2009

TO: Phil Andrews, County Council President

FROM: Isiah Leggett, County Executive

SUBJECT: Implementation of the Home Energy Loan Program

The purpose of this memorandum is to request an extension of time to draft implementing regulations for the Home Energy Loan Program (HELP) established in Expedited Bill 06-09 (enacted on April 22, 2009) and to provide updated information to the County Council related to implementation of the program.

The HELP legislation required the Executive branch to:

1. Submit implementing regulations to the County Council within six months of enactment of the legislation, unless the Council grants an extension;
2. Report to the County Council if the Executive believes that the repayment provisions of the program are likely to unduly burden the lending industry or hinder homeowners from obtaining financing to refinance or purchase a home; and
3. Report to the County Council on whether the cost of a home energy audit is likely to be a significant barrier to participation in the program.

The Departments of Environmental Protection (DEP), Finance (Finance Department), and Economic Development (DED) collaborated to develop the following information to address these issues.

Development of Implementing Regulations

Although a significant amount of work has been done toward the development of implementing regulations, I am requesting an extension of the deadline to submit final regulations. Executive branch staff, in conjunction with the Maryland Clean Energy Center (MCEC), held a number of stakeholder meetings to discuss the operation of the program. These meetings, which included energy auditors, contractors involved in energy efficiency improvements and renewable energy installations, utility representatives, and financing and banking personnel, helped clarify a number of issues that will be fundamental to the success of the program. However, these meetings also helped identify a number of issues that still need to be resolved prior to the completion of regulations. These issues are summarized below.

Funding the Program

While the Finance Department early on identified self-supporting appropriation-backed debt as an appropriate funding source for HELP, numerous questions remain to be answered, including the identification of a secure, up front funding source for the loans prior to bond issuance; the degree that loan repayments will fully cover the entire costs of the program, including both bond repayment and administration; and underwriting criteria.

DEP proposed to use approximately $1.5 million in American Recovery and Reinvestment Act (ARRA) funds, which will be made available to the County from the U.S. Department of Energy (DOE) through an Energy Efficiency and Conservation Block Grant (EECBG), to support the program. To date, the County's application for EECBG funding has not been approved by the DOE. During the initial review process, DOE raised several questions regarding the use of EECBG funds for HELP. It seems clear from the initial feedback that EECBG funding could not be used for renewable projects unless it was in conjunction with energy efficiency activities, or the energy efficiency of the home must be demonstrated (to a standard established by DEP).

From a longer-term perspective, another obstacle to the development of regulations (and more fundamentally the actual implementation of the program) remains finding a source of permanent funding. A variety of different approaches were identified as potential options, including grant funding, bond funding, and private capital. It was generally believed when this program was enacted that cash would be available to fund the program via various Federal and state grants. However, to date a defined source of funds has not materialized.

The Finance Department believes that the County may be able to utilize a new ARRA bond program to fund HELP. Specifically, Qualified Energy Conservation Bonds (QECBs) are designed to provide funding for capital expenditures incurred for implementing green community programs (including loans, grants or other repayment mechanisms to implement such programs). The cost/benefit analysis relative to determining the economic benefit of using these bonds to fund the program has not been completed.

Use of either of these sources of money may have major implications on the requirements of the program. For example, both the EECBG funds and bond proceeds must be spent within prescribed periods of time. In addition, activities conducted under HELP may be subject to Davis-Bacon wage requirements if ARRA funds are utilized. These and other issues related to the use of ARRA funds cannot be resolved until additional guidance is provided by DOE and/or the Maryland Energy Administration (MEA), which is defining parameters for use of QECBs in Maryland.

Partnering with the Maryland Clean Energy Center

The MEA is interested in supporting energy efficiency loan programs throughout the State. Among other things, MEA has suggested that up to $4 million of State ARRA funds will be devoted to this effort – $2 million to set up the infrastructure (e.g., program website, outreach materials, etc.) to support the administration of such programs, and $2 million for loan capital. At the request of MEA, the MCEC is working to develop a model that could form the basis for programs in jurisdictions throughout the State. In addition, the MCEC is exploring whether they could serve as the program administrator for Montgomery County and other jurisdictions, and what this would entail.

MCEC administration of the program has the potential to greatly reduce the cost to the County of developing the basic infrastructure for the program. MCEC's role as administrator is still subject to approval by the MCEC Board of Directors, and the details of this role need to be defined. In addition, because ARRA is the source of funding that supports the MCEC's activities, the issues highlighted previously related to ARRA funding need to be considered.

Utility Residential Energy Efficiency Programs

The County is served by three electricity utilities (PEPCO, BGE and Allegheny). Each is in the process of developing demand side management (DSM) programs as required by the EmPower Maryland Energy Efficiency Act of 2008. These programs, funded by surcharges on electric bills and subject to approval by the Maryland Public Service Commission (PSC), are designed to help achieve a 15% reduction in per capita electricity use statewide by 2015. Energy audits are a critical component of the utilities' DSM programs, which are in various stages of development. The utility programs are not identical, although each utility has indicated that they intend to use EPA's Home Performance with ENERGY STAR process as the basis for their program.

DEP believes the Home Performance with ENERGY STAR process provides a strong foundation for the audit program under HELP. However, HELP requires certain things from an auditor that the utility programs may not. For example, the HELP legislation requires the audit to highlight those measures that provide cost savings in the initial year of the program, which is not necessarily a requirement of the utility programs. This provision of the legislation requires the auditor to allocate additional time which may not be compensated through the utility programs.

Although discussions have been held with utility representatives regarding HELP, it is important that the relationship between the program and the utilities' DSM programs be clearly determined. Given the significant commitment made by utilities to their DSM programs, and the outreach and education efforts that will accompany these programs, there is the potential for confusion and frustration among residents if HELP and the utility DSM programs are not well coordinated.

Miscellaneous Process Issues

The analysis of programs similar to HELP in other jurisdictions has highlighted several process issues that need to be resolved prior to finalization of regulations. As one example, procedures for disbursing loan funds must be developed. Contractors stressed to DEP that it is important that payments be made directly to the contractor performing the work rather than to the homeowner. The program in Boulder, CO makes payments to the contractor upon approval of the homeowner that the work was satisfactorily performed. In Sonoma County, CA, payments are made to the homeowner, although is appears the homeowner may agree to assign payments to the contractor that performed the work. A significant issue for the contractors is the timing of the payments. Some require a portion of the payment prior to the initiation of the work. Almost all require the balance of the payment at the completion of the job. It is important to note that many energy efficiency improvements funded through HELP may involve the work of multiple contractors, further complicating the payment process. The legal and procedural issues associated with making payments to contractors still need to be figured out.

Impact of HELP on Lending Institutions/Borrowers

Based on a review of similar programs throughout the country, DED determined that the repayment provisions of HELP would not burden the lending industry or hinder homeowners from obtaining financing to refinance or purchase a home if implementing regulations are carefully crafted. On the contrary, DED believes that HELP will likely benefit lenders by increasing property values and increasing borrowers' cash flow. HELP will also create a steady demand for energy efficient/renewable products, which will benefit the local lending industry by growing local businesses to meet these demands.

The County's financing processes already accommodate taxes and liens – and the HELP assessment is no different. Like other taxes or special district assessments, the HELP assessment will not trigger a default. Further, in the event of foreclosure, only the amount due or in default would need to be paid. The banks' concerns about increased escrow payments and closing costs are acknowledged, but these costs will likely be more than offset by the cost savings associated with lower utility costs.

DED believes that some of the lending industry's concerns should be addressed in the final program plan. For example, the County should ensure that loan-to-value ratios are appropriate. And, the County should consider only putting an assessment in place when the ratio of projected savings to assessment payment is positive. Consideration should also be given to limiting the size of the loan, thereby reducing risk.

Support for property assessed clean energy, or PACE programs, is growing nationally. Since the passage of enabling legislation allowing the financing of energy retrofits with PACE bonds in California in 2008, 12 other states, including Maryland, adopted enabling legislation, and two others are considering it. Additionally, on September 24, 2009, the Clinton Global Initiative announced a national PACE finance program, which will be supported by 50 mayors and 50 municipalities.

Cost of the Energy Audit

Generally, the unsubsidized cost of an energy audit that is likely to qualify for HELP is in the range of $300 to $700, depending on a home's characteristics (e.g., size) and the scope of the audit. Under certain conditions, audits available through utility DSM programs may also meet the requirements of HELP. In either case, Bill 06-09 allows for the cost of the audit to be included in the amount of the HELP loan. The County Council asked DEP to report whether paying for the audit upfront would be a barrier to participation in HELP.

Simply put, the answer to this is unclear. A precedent set by some related programs is that a consumer needs to pay for the audit, or a significant portion of it, as a good faith commitment to following through with the upgrade process. For example, the Long Island Green Home program (Babylon, NY) requires the homeowner to pay $250 for a home evaluation to "ensure your commitment to the program." Programs in Boulder, CO and Sonoma County, CA recommend but do not require an audit. Neither provides financial support for the audit, although the audit can be included as part of the loan in Sonoma County. The lessons learned from other programs where the cost of an audit was covered by the offering entity cannot necessarily be translated to HELP, as these programs provided grants or rebates for improvements as opposed to long-term financing as contemplated in HELP.

DEP does not believe the upfront cost of an energy audit will be a significant barrier to participating in the program for the majority of Montgomery County consumers. The program is predicated upon utility cost savings offsetting all or a significant portion of the required loan repayment assessed on the property tax bill. These savings are neither certain or guaranteed, as they are dependent upon a wide array of factors including consumer behavior. If a consumer cannot raise the resources to front the cost of the audit, they may be ill equipped to balance fluctuations in utility costs in addition to the loan repayment. Consumers with the greatest needs and the lowest income – those below 175% of poverty level – are eligible for County administered weatherization services or in some cases utility operated limited income programs. While programs can be conceived for hardship cases that provide audit cost assistance, these programs may ultimately be resource intensive to operate and serve a relatively small portion of the population. The costs of these programs would likely have to be spread across all participants as increased administration fees, which may inhibit broader participation in the program. Should evidence emerge, based on consumer feedback and program performance, that the cost of the energy audit is limiting participation of otherwise qualified consumers, appropriate options for addressing this issue can be considered.

Conclusion

I want to reiterate my strong support for HELP. I believe it is one of the most effective ways to enable homeowners to improve the energy efficiency of their homes, which provides them with direct financial savings while helping to improve the environment.

In order to ensure that the program is successful, it is critical that we address the issues identified above so that residents can efficiently take advantage of the program. I have directed staff working on the development of regulations to make every reasonable effort to ensure that final regulations are submitted to the County Council by April 15, 2010. If you or other members of the County Council members would like to discuss these issues in greater detail, please contact DEP Director Bob Hoyt, Finance Director Jennifer Barrett, or DED Director Steve Silverman.

cc: Timothy L. Firestine, Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Bob Hoyt, DEP Director
Jennifer Barrett, Finance Director
Steve Silverman, DED Director
Leon Rodriquez, County Attorney