

MEMORANDUM

June 24, 2016

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *amihill*

SUBJECT: **Action:** Bill 18-16, Commercial Property Assessed Clean Energy Program – Amendments

Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): enact Bill 18-16.

Bill 18-16, Commercial Property Assessed Clean Energy Program - Amendments, sponsored by Lead Sponsor Council President on behalf of the County Executive, was introduced on April 19, 2016. A public hearing was held on June 14; a representative from the Executive was the only speaker (©11).

Bill 18-16 would amend the definition for commercial property, require a third-party lender to record the loan in the County land records, and modify certain eligibility requirements for a loan under the program. **Committee recommendation (3-0):** At its worksession on June 23, the Transportation, Infrastructure, Energy and Environment Committee recommended enactment of Bill 18-16.

This packet contains:

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Bill No. 18-16
Concerning: Commercial Property
Assessed Clean Energy Program -
Amendments
Revised: 4/14/2016 Draft No. 1
Introduced: April 19, 2016
Expires: October 19, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

AN ACT to:

- (1) amend the definition for commercial property;
- (2) require a third-party lender to record the loan in the County land records;
- (3) modify certain eligibility requirements for a loan under the program; and
- (4) generally amend County law regarding the Commercial Property Assessed Clean Energy Program.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-33, 18A-34, and 18A-35

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<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>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 18A-33, 18A-34, and 18A-35 are amended as follows:

Article 5. Commercial Property Assessed Clean Energy Program

18A-33. Definitions.

(a) *Definitions.* In this Section, the following words have the meanings indicated:

Certified General Real Estate Appraiser means an individual who is certified as a certified real estate appraiser for general real estate under Title 16 of the Business Occupations Article of the Maryland Code.

Commercial property means any real property located in the County that is either not designed for or intended for human habitation, or that is used for human habitation as a multi-family dwelling of [[4 or]] more than 4 rental units.

* * *

18A-34. Commercial Property Assessed Clean Energy Program established.

* * *

(b) *Third-party lender.*

(1) The Director may enter into an agreement with a third-party lender that is either a County designated lender or a private lender that funds a loan for an improvement. The agreement must provide for the repayment of the loan for the improvement and any cost of administering the Program through a surcharge on the qualified property. The loan may include the cost of materials and labor necessary for installation, any permit fee, any inspection fee, any application or administrative fee, any bank or lender fee, and any other fee that the property owner may incur for the installation of the improvement. The third-party lender must submit a request for collection of each surcharge amount to the County designated

28 program manager or, if there is no County designated program
29 manager, to the Department no later than April 1 of each year.

30 (2) The third-party lender must record a document among the land
31 records of Montgomery County within 30 days of the time the loan
32 is funded, which provides notice of the Commercial Property
33 Assessed Clean Energy loan associated with the property and that
34 the surcharge will be collected and have lien status like all other
35 real property taxes.

36 * * *

37 **18A-35. Eligibility.**

38 (a) *Eligibility.*

39 * * *

40 (4) The loan amount under this Program must meet the following
41 criteria:

42 (A) The loan amount must be at least \$5,000 and [no] not more
43 than 20% of either the full cash value or the appraised value
44 of the qualified property. The full cash value is determined
45 by the Maryland State Department of Assessments and
46 Taxation. The appraised value must be determined by a
47 Certified General Real Estate Appraiser and must have been
48 certified no more than 12 months before the date of the loan
49 application[; and].

50 (B) The loan amount, together with the outstanding balance of
51 the mortgage or deed of trust, must be no more than 90% of
52 either the full cash value or the appraised value of the
53 qualified property.

54 (b) *Property Assessed Clean Energy Surcharge.*

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(3) As a condition for entering into an agreement under the Program, the County designated lender or private lender must provide the County designated program manager and the Department a copy of the loan documents and documents that verify:

(F) appraised value of the qualified property as certified in the appraisal report submitted by a Certified General Real Estate Appraiser if the eligibility requirement in 18A-35(a)(4) is based on the appraised value of the qualified property;

[F] (G) loan to value documentation; and

[G] (H) any other financial or program document that the Director deems necessary.

* * *

Approved:

Nancy Floreen, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Recommended Bill, Commercial Property Assessed Clean Energy Program - Amended

DESCRIPTION: The requested legislation amends Article 5, Sections 33, 34 and 35 of Chapter 18A of the Montgomery County Code. The amended sections correct a definition for commercial property to make it consistent with State Law authorizing a Commercial Property Assessed Clean Energy (C-PACE) Program; add a loan recordation requirement for the third-party lender to ensure that subsequent lenders are given notice of the special lien status of a C-PACE loan on the property; and modify the eligibility requirement for a loan under this program by allowing the loan applicant to use either the full cash value of the property as determined by the State Department of Assessments and Taxation or the appraised value of the property as determined by a Certified General Real Estate Appraiser. County Law governing the C-PACE program in Montgomery County was adopted with Bill 6-15 following passage of Maryland SB 186.

PROBLEM: County Law defines that a commercial property means a property that is either not designed for or intended for human habitation, or that is used for human habitation as a multi-family dwelling of 4 or more rental units. State Law requires a multi-family dwelling of more than 4 rental units. This Bill makes that correction. The Attorney General of Maryland noted in an April 28, 2014 opinion on SB 186, that the lack of notification for subsequent lenders of the special lien status of a C-PACE loan on the property, may constitute a violation of both federal and Maryland Constitutions. That opinion recommended that any local ordinance or resolution implementing a C-PACE program include a notification requirement of the special lien status of the C-PACE loan on that property in the County's land record. This Bill includes that AG recommendation. There was a concern expressed by several commercial entities interested in participating in the County C-PACE program that the full cash value is lower than the appraised value and thus limits their ability to take full advantage of the C-PACE loan program. This Bill adds an option for the applicant to use either the full cash value or the appraised value of their property.

GOALS AND OBJECTIVES: To make the Montgomery County C-PACE program fully consistent with State Law, remedies possible violations of federal and State Constitutions, and enhances access to the C-PACE program for loan applicants.

COORDINATION: Department of Finance

FISCAL IMPACT: Office of Management and Budget

ECONOMIC

IMPACT: Department of Finance

EVALUATION: n/a

EXPERIENCE

ELSEWHERE: n/a

SOURCE OF

INFORMATION: David Crow, Department of Finance (7-8859)

APPLICATION

WITHIN

MUNICIPALITIES: n/a

PENALTIES: n/a



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 11, 2016

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Amended Legislation – Commercial Property Assessed Clean Energy Program

I am hereby submitting legislation for your consideration and County Council action. The legislation amends the County Code that established a Commercial Property Assessed Clean Energy (C-PACE) Program.

With the adoption of Bill 6-15 on April 8, 2015 Montgomery County established the Commercial PACE Program. This amended legislation makes three changes to the County Code by (1) correcting the definition for commercial property to make it consistent with State Law authorizing a Commercial PACE program, (2) adding a loan recordation requirement for the third-party lender to ensure that subsequent lenders are given notice of the special lien status of a Commercial PACE loan on the property, and (3) modifying the eligibility requirement for a loan under this program by allowing the loan applicant to use either the full cash value of the property as determined by the State Department of Assessments and Taxation or the appraised value of the property as determined by a Certified General Real Estate Appraiser.

I urge the Council to support this legislation. My staff are available to respond to any questions you may have on this amendment or provide clarification.

cc: Timothy Firestine, Chief Administrative Officer
Marc Hansen, County Attorney
Joseph Beach, Director of Finance
Jennifer Hughes, Director, Office of Management and Budget
Bonnie Kirkland, Assistant Chief Administrative Officer

Attachments: Expedited Legislation; Legislative Request Report; Fiscal Impact Statement; Economic Impact Statement

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Fiscal Impact Statement
Bill XX-16, Commercial Property Assessed
Clean Energy Program - Amended

1. Legislative Summary.

This legislation would correct the definition for commercial property to make it consistent with State Law authorizing a Commercial Property Assessed Clean Energy Program; add a loan recordation requirement for the third-party lender to ensure that subsequent lenders are given notice of the special lien status of a Commercial Property Assessed Clean Energy loan on the property; and modifies the eligibility requirement for a loan under this program to use either the full cash value of the property as determined by the State Department of Assessments and Taxation or the appraised value of the property as determined by a Certified General Real Estate Appraiser.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

This legislation makes technical corrections to County Law that will not result in a net change in revenues or expenditures to the County.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Please see number 2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not Applicable.

6. An estimate of the staff time needed to implement the bill.

Not Applicable.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not Applicable.

8. An estimate of costs when an additional appropriation is needed.

Not Applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not Applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not Applicable.

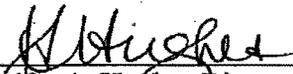
12. Other fiscal impacts or comments.

Not Applicable.

13. The following contributed to and concurred with this analysis:

Robert Hagedoorn and David Crow, Department of Finance

Jane Mukira, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

4/4/16
Date

Economic Impact Statement
Bill XX-16, Commercial Property Assessed Clean Energy Program - Amended

Background:

This legislation would correct the definition for commercial property to make it consistent with State Law authorizing a Commercial Property Assessed Clean Energy Program; add a loan recordation requirement for the third-party lender to ensure that subsequent lenders are given notice of the special lien status of a Commercial Property Assessed Clean Energy loan on the property; and modifies the eligibility requirement for a loan under this program to use either the full cash value of the property as determined by the State Department of Assessments and Taxation or the appraised value of the property as determined by a Certified General Real Estate Appraiser.

1. The sources of information, assumptions, and methodologies used.

This Bill makes technical corrections to County Law and there are no sources of information, assumptions, and methodologies used that are applicable.

2. A description of any variable that could affect the economic impact estimates.

This Bill makes technical corrections to County Law and there are no variables that could affect the economic impact.

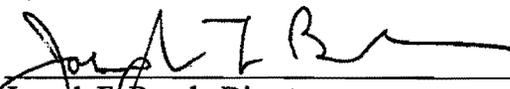
3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

This Bill makes technical corrections to County Law and has no positive or negative effect on employment, spending, saving, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see item #3

5. The following contributed to and concurred with this analysis: David Platt, David Crow, and Robert Hagedoorn, Department of Finance.



Joseph F. Beach, Director
Department of Finance

3/31/16
Date

(10)

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
BILL 18-16 – COMMERCIAL PACE**

June 14, 2016

My name is David Crow, Fiscal Projects Manager, Department of Finance, and I am here to testify on behalf of County Executive Isiah Leggett in support of Bill 18-16.

This bill provides technical amendments to the County's Commercial Property Assessed Clean Energy (C-PACE) program, which was established under bill 6-15, and are needed to correct and improve the current structure of the C-PACE program. This program is designed to assist qualifying commercial property owners with making energy improvements and to have the annual C-PACE loan repayment collected as a surcharge on the property owner's property tax bill.

Bill 18-16 will enhance the C-PACE program and strengthen this important environmental initiative for the County. Thank you for allowing me this opportunity to testify today.