

MEMORANDUM

March 16, 2015

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Worksession:** Bill 6-15, Commercial Property Assessed Clean Energy Program – Established

Bill 6-15, Commercial Property Assessed Clean Energy Program - Established, sponsored by the Council President at the request of the County Executive, was introduced on February 3, 2015. A public hearing was held on March 3 at which representatives from the County Executive and the Apartment and Office Building Association (AOBA) supported the bill.

Bill 6-15 would:

- establish a Commercial Property Assessed Clean Energy Program to assist qualifying commercial property owners to make energy improvements;
- allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a real property tax bill;
- establish that the surcharge on a real property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and
- generally amend the environmental sustainability law.

Background

As Committee members may recall, in 2013 the Council enacted (and the Executive later signed) Bill 11-13, which required the Executive to prepare a plan for implementing a Commercial Property Assessed Clean Energy Program (PACE). The Executive delivered the Plan to the Council on May 19, 2014. Bill 6-15 would implement that Plan.

Issues for Committee Discussion

Lender consent. The proposed PACE program would require the consent of any mortgagee before a property owner can participate in the program (©7, lines 148-149). In its hearing testimony, AOBA noted its view that this provision is necessary because many loan documents prohibit a

borrower from assuming additional loans without lender consent. However, AOBA also questioned whether lenders are granting consent for building owners to apply for PACE loans (©23). While Council staff believes this is an important provision to retain in the bill, Committee members may wish to discuss this issue with Executive staff present at the worksession.

Owner's ability to repay. Subtitle 11 of the Local Government Article of the Maryland Code authorizes a county or municipality to establish a clean energy loan program. Section 1-1104 of that law requires that one of the eligibility requirements for participation in this program be that the county must "give due regard for the property owner's ability to repay a loan provided under the program." This requirement is not in Bill 6-15 as introduced. **Council staff recommendation:** As the County Attorney memorandum on ©25 correctly states, Bill 6-15 should be amended to include this requirement.

Council staff recommendation: enact Bill 6-15 with the amendment described above.

This packet contains:	<u>Circle #</u>
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Bill No. 6-15
Concerning: Commercial Property
Assessed Clean Energy Program -
Established
Revised: 1/14/2015 Draft No. 1
Introduced: February 3, 2015
Enacted: August 3, 2016
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) establish a Commercial Property Assessed Clean Energy Program to assist qualifying commercial property owners to make energy improvements;
- (2) allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a real property tax bill;
- (3) establish that the surcharge on a real property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and
- (4) generally amend the environmental sustainability law.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-33, 18A-34, 18A-35, 18A-36, and 18A-37

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:

1 **Sec. 1. Sections 18A-33, 18A-34, 18A-35, 18A-36, and 18A-37 are amended**
 2 **as follows:**

3 **Article 5. Commercial Property Assessed Clean Energy Program**

4 **18A-33. [Commercial Property Assessed Clean Energy Program] Definitions.**

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

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

10 Commercial Property Assessed Clean Energy Program or Program
 11 means a program that facilitates energy improvements and requires
 12 repayment through a surcharge on the owner’s property tax bill.

13 County designated lender means a person who may be selected by the
 14 County through a competitive process to offer financing, and if offered
 15 and accepted by the County, related funding for administrative services
 16 for the Program.

17 County designated program manager means a person who may be
 18 selected by the County through a competitive process to provide
 19 administrative and management services for the Program.

20 Department means the Department of Finance.

21 Director means the Director of the Department or the Director’s
 22 designee.

23 Energy efficiency and/or renewable energy improvement or improvement
 24 means any equipment, device, or material that is intended to decrease
 25 energy consumption or expand use of renewable energy sources,
 26 including:

27 (1) insulation in any wall, roof, floor, foundation, or heating and

- 28 cooling distribution system;
- 29 (2) a storm window or door, multi-glazed window or door, heat-
30 absorbing or heat-reflective glazed and coated window and door
31 system, or additional glazing, reduction in glass area, and other
32 window and door system modification that reduces energy
33 consumption;
- 34 (3) an automated energy control system;
- 35 (4) a heating, ventilating, or air-conditioning and distribution system
36 modification or replacement;
- 37 (5) caulking, weather-stripping, and air sealing;
- 38 (6) replacement or modification of a lighting fixture to reduce the
39 energy use of the lighting system;
- 40 (7) an energy recovery system;
- 41 (8) a day lighting system;
- 42 (9) the installation or upgrade of electrical wiring or outlets to charge
43 a motor vehicle that is fully or partially powered by electricity;
- 44 (10) a measure that reduces the usage of water or increases the
45 efficiency of water usage;
- 46 (11) any other installation or modification of equipment, device, or
47 other material intended to decrease energy consumption or expand
48 the use of a renewable energy source;
- 49 (12) any measure or system that makes use of or expands a renewable
50 source of energy, including solar water heater, solar thermal
51 electric, photovoltaic's, wind, biomass, hydroelectric, geothermal
52 electric, geothermal heat pumps, anaerobic digestion, tidal energy,
53 wave energy, ocean thermal, fuel cells using renewable fuels, and
54 geothermal direct-use; or

55 (13) any renewable energy system that is a fixture, product, device, or
 56 interacting group of fixtures, products, or devices on the
 57 customer's side of the electricity meter that uses at least one
 58 renewable energy source to generate electricity. A renewable
 59 energy system includes a biomass system, but does not include an
 60 incinerator or digester.

61 Private lender means a lender selected by the property owner to provide
 62 loan funds to the property owner for an improvement.

63 Property owner means a person who owns qualified property or has a
 64 ground lease or a long-term lease of 8 or more years on qualified property.

65 Qualified property means any commercial real property that meets the
 66 eligibility criteria for the Program.

67 Renewable energy source means a source of energy that naturally
 68 replenishes over a human, not a geological, time frame and that is
 69 ultimately derived from solar power, water power, or wind power.

70 Renewable energy source does not include petroleum, nuclear, natural
 71 gas, or coal. A renewable energy source comes from the sun or from
 72 thermal inertia of the earth and minimizes the output of toxic material in
 73 the conversion of the energy and includes:

- 74 (1) non-hazardous, organic biomass material;
- 75 (2) solar electric and solar thermal energy;
- 76 (3) wind energy;
- 77 (4) geothermal energy; and
- 78 (5) methane gas captured from a landfill.

79 Surcharge means the annual repayment of a loan, including principal,
 80 interest, and related charges, that funds an improvement and is collected
 81 through the real property tax billing process.

82 [(b) The Executive must, by May 19, 2014, prepare a plan for implementing
83 a Commercial Property Assessed Clean Energy Program that analyzes
84 and provides recommendations on the following elements:

- 85 (1) standards for eligible energy and environmental improvements;
- 86 (2) energy audit or project design review requirements;
- 87 (3) procedures for monitoring project progress and post-installation
88 inspections;
- 89 (4) program funding sources;
- 90 (5) lending standards and priorities;
- 91 (6) minimum and maximum loan amounts;
- 92 (7) interest rates, terms, and conditions;
- 93 (8) application procedures, including necessary supporting
94 documentation;
- 95 (9) criteria for adequate security;
- 96 (10) procedures to refer applicants to other public and private sources
97 of funds and incentives;
- 98 (11) procedures related to decisions on loan acceptance and denial, or
99 loan terms and conditions;
- 100 (12) procedures for nonpayment or default;
- 101 (13) disclosure requirements for real estate transactions;
- 102 (14) criteria for loan disbursement; and
- 103 (15) any additional requirements necessary for program operation or
104 security of loan funds identified by the Executive.]

105 ~~[[18A-34 – 18A-37. Reserved.]]~~

106 **18A-34. Commercial Property Assessed Clean Energy Program established.**

- 107 (a) Established. The Director must create and administer a Commercial
108 Property Assessed Clean Energy Program.

- 109 (b) Third-party lender. The Director may enter into an agreement with a
110 third-party lender that is either a County designated lender or a private
111 lender that funds a loan for an improvement. The agreement must provide
112 for the repayment of the loan for the improvement and any cost of
113 administering the Program through a surcharge on the qualified property.
114 The loan may include the cost of materials and labor necessary for
115 installation, any permit fee, any inspection fee, any application or
116 administrative fee, any bank or lender fee, and any other fee that the
117 property owner may incur for the installation of the improvement. The
118 third-party lender must submit a request for collection of each surcharge
119 amount to the County designated program manager or, if there is no
120 County designated program manager, to the Department no later than
121 April 1 of each year.
- 122 (c) County designated program manager. The Director may enter into an
123 agreement with a County designated program manager. The County
124 designated program manager must notify the Department of the amount
125 of the surcharge for each account to be collected on the real property tax
126 bill for that year's levy no later than May 1 of each year, and in a format
127 approved by the Department. The County designated program manager
128 will receive the collections from the County, reconcile the collected and
129 billed surcharge for each account, and remit the surcharge amount to the
130 County designated lender or private lender. The County designated
131 program manager must report annually to the County on the participants
132 in the Program by name, property address, property tax account number,
133 amount of each surcharge billed, collected by the County, and remitted to
134 the lender, description of project, any administrative fees, the amount of
135 each loan, the amount of each loan balance, and the term of each loan.

136 This report must be submitted to the Department no later than February
 137 15 of each year pertaining to activity in the prior calendar year.

138 (d) The Director may enter into an agreement with one person who provides
 139 both County designated lender and County designated program manager
 140 services.

141 **18A-35. Eligibility.**

142 In order to be eligible for this Program, the following criteria must be met:

143 (a) Eligibility.

144 (1) The property must be a qualified property.

145 (2) The property owner must submit the following to the private lender
 146 or the County designated lender at the time of application for
 147 funding:

148 (A) express written consent of any holder of an existing
 149 mortgage or deed of trust on a qualified property; and

150 (B) verification that there are no delinquent fees, taxes, water or
 151 sewer charges or other special assessments on the qualified
 152 property.

153 (3) The loan amount under this Program must:

154 (A) be at least \$5,000 and no more than 20% of the full cash
 155 value of the qualified property. The full cash value is
 156 determined by the Maryland State Department of
 157 Assessments and Taxation; and

158 (B) together with the outstanding balance of the mortgage or
 159 deed of trust, be no more than 90% of the full cash value of
 160 the qualified property.

161 (b) Property Assessed Clean Energy Surcharge.

162 (1) The property owner of qualified property must agree to repay the

163 amount financed through a surcharge levied on the County's real
 164 property tax bill for the qualified property.

165 (2) A surcharge may be imposed under a written agreement between
 166 the County designated lender or private lender and the County.

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

171 (A) there are no delinquent taxes, special assessments, or water
 172 or sewer charges on the qualified property;

173 (B) there are no delinquent assessments on the qualified
 174 property under the Program;

175 (C) the property owner has obtained all necessary permits;

176 (D) the improvement is permanently affixed to the qualified
 177 property and complies with all applicable State and federal
 178 statutes and regulations, as determined by the appropriate
 179 regulatory authority;

180 (E) existing mortgage or deed of trust lender consent;

181 (F) loan to value documentation; and

182 (G) any other financial or program document that the Director
 183 deems necessary.

184 (4) In addition to the administrative fees in Section 18A-34(c), the
 185 County may collect an administrative fee through the surcharge to
 186 cover charges relating to lending, program management, billing, or
 187 collection.

188 **18A-36. Payment of surcharge; lien.**

189 (a) The County must collect the amount financed through a surcharge on the

190 property owner's real property tax bill and forward payments received by
 191 the County to the County designated program manager or, if there is no
 192 County designated program manager, to the lender no later than 30 days
 193 after the payment due dates for real property taxes. Payment due dates for
 194 semi-annual real property taxes are September 30 for the first installment
 195 and December 31 for the second installment, and for annual real property
 196 taxes the payment due date is September 30.

197 (b) If the property owner sells the qualified property, the buyer must continue
 198 to pay the surcharge levied on the annual property tax bill.

199 (c) The surcharge and any accrued interest or penalty constitutes a first lien
 200 on the real property to which the surcharge applies until paid. An unpaid
 201 surcharge will be, until paid, a lien on the qualified property on which it
 202 is imposed from the date it becomes payable. The surcharge will accrue
 203 interest and penalty and will be treated and collected like all other County
 204 property taxes. Any delinquency will be collected through the County
 205 Tax Sale process. The provisions of Title 14, Subtitle 8 of the Tax –
 206 Property Article of the Maryland Code that apply to a tax lien will also
 207 apply to the lien created under this law. Any delinquent surcharge
 208 collected through the County Tax Sale process must be forwarded to the
 209 County designated program manager or, if there is no County designated
 210 program manager, to the lender no later than 30 days after the payment
 211 was received.

212 **18A-37. Regulations; annual report.**

213 (a) The Executive may adopt regulations under Method (2) to administer the
 214 Program.

215 (b) The Executive must submit an annual report to the County Council by
 216 March 15 of each year describing program participation, number and

LEGISLATIVE REQUEST REPORT

Bill 6-15

Commercial Property Assessed Clean Energy Program - Established

DESCRIPTION: The requested legislation amends Article 5, Sections 33-37 of Chapter 18A of the Montgomery County Code. The amended sections establish a Commercial Property Assessed Clean Energy (PACE) Program to assist qualifying commercial property owners to make energy improvements; allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; establish that the surcharge on a property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and generally amend the environmental sustainability law. Current law, as adopted through Bill 11-13, requires that the County Executive submit a Commercial PACE Program Implementation Plan to the County Council on May 19, 2014. The County Executive submitted an Implementation Plan and is subsequently submitting legislation to establish the PACE program.

PROBLEM: Energy efficiency and renewable energy improvements, for example high-efficiency heating and air-conditioning systems, may be prohibitively costly to the property owner. PACE is designed to assist qualifying commercial properties with financing energy improvements. The PACE loan from a private lender is paid back through annual surcharges on the property tax bill. This loan stays with the property and a subsequent owner continues to pay the surcharge until the loan is fully paid. Moreover, having the PACE surcharge included on the tax bill provides greater security for the lender in the loan repayment as it allows the charge to be part of the tax bill and therefore part of the tax lien process if the PACE surcharge goes unpaid. PACE also addresses the problem of "split incentive" where an owner-financed improvement benefits the tenant through energy savings. Using the PACE repayment process, such improvement repayments are levied through the property tax bill that in many cases are paid by the tenant.

GOALS AND OBJECTIVES: To implement a Commercial PACE program that makes energy efficiency and renewable energy improvements more affordable and provides greater security to lenders in terms of collection of loan payments. Such energy improvements provide an environmental benefit to the borrower and the County.

COORDINATION: Department of Finance

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Department of Finance

EVALUATION: n/a

EXPERIENCE ELSEWHERE: PACE programs have been introduced in various jurisdictions, including Washington DC, San Francisco, Connecticut and Florida. In some cases, the jurisdiction provides funding, such as in Washington DC, while in others, for example San Francisco CA, the program relies on private capital or owner-arranged financing.

SOURCE OF INFORMATION: Robert Hagedoorn, Department of Finance (7-8887)

APPLICATION WITHIN MUNICIPALITIES: n/a

PENALTIES: n/a



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

January 14, 2015

TO: George Leventhal, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Legislation – Commercial Property Assessed Clean Energy Program

I am hereby submitting expedited legislation for your consideration and County Council action. The legislation amends the County Code to establish a Commercial Property Assessed Clean Energy (PACE) Program.

The PACE Program assists qualifying commercial property owners with making energy improvements; allows private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; and generally amends the environmental sustainability law.

Pursuant to current law, I submitted a Commercial PACE Program Implementation Plan to the County Council by May 19, 2014, and am subsequently submitting legislation to establish the PACE program. I look forward to working with the Council to implement this important environmental initiative.

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



ROCKVILLE, MARYLAND

MEMORANDUM

November 21, 2014

TO: Timothy L. Firestine, Chief Administrative Officer

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill XX-14, Commercial Property Assessed Clean Energy Program -
Established

Please find attached the fiscal impact statement for the above-referenced bill.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph Beach, Director, Department of Finance
Elyse Greenwald, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill XX-14, Commercial Property Assessed
Clean Energy Program - Established

1. Legislative Summary.

The proposed bill establishes a Commercial Property Assessed Clean Energy (PACE) program within the Department of Finance to assist qualified commercial property owners make energy improvements. The proposed legislation allows the County to enter into an agreement with a third party lender and collect loan repayments through the property tax bill.

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.

The legislation will not result in a net change in revenues or expenditures to the County. The County intends to pass through all programmatic costs to program participants through fees charged with the loans made by private underwriters under contract with the County.

PACE programs in other jurisdictions have both initial startup costs and ongoing program operating costs. These costs are often funded by a surcharge on each loan. However, it will be necessary to carefully monitor these costs to ensure that the lending rates are competitive and support broad participation in the program from commercial property owners.

Montgomery County has already incurred an estimated \$100,000 in existing staff and consultant costs for the start up of this program including preparing the Program Guidelines and related legislation.

In addition to PACE program implementation costs, the Department of Environmental Protection (DEP) estimates a public outreach and media campaign for the PACE program would need to occur to both inform the public of the program and encourage participation. DEP estimates the initial public outreach budget related to PACE at \$25,000.

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.

As stated in #2 above, the County intends to pass through the program administration costs to program participants. However, it will be necessary to monitor and carefully manage these costs to ensure that the lending rates are competitive and support broad participation in the

program from commercial property owners. Depending on the success of the PACE program, there may be a need for more outreach, support, and program resources.

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

Assuming the County is successful in outsourcing both the lending and program administration function to a third-party, the Department of Finance will absorb the new Commercial PACE related responsibilities with existing staff.

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

There will be no significant impact to existing staff in the Department of Finance or the Department Environmental Protection by adding this responsibility to existing portfolios.

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

See number 2 and 6 above.

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

See number 2 and 6 above.

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

See number 2 above. While some data are available on commercial PACE programs, sufficient long-term trend data are currently unavailable to accurately estimate revenues and expenditures of a fully functioning commercial PACE program. Program implementation expenditures should be re-examined regularly to ensure the program is fiscally and economically viable.

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:

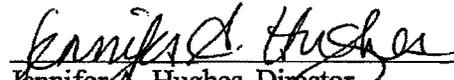
Stan Edwards, Department of Environmental Protection

Michelle Vigen, Department of Environmental Protection

Robert Hagedoorn, Department of Finance

Eric Coffman, Department of General Services

Alex Espinosa, Office of Management and Budget
Elyse Greenwald, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

12/2/14
Date

Economic Impact Statement
Bill xx-14, Commercial Property Assessed Clean Energy Program - Established

Background:

This legislation would establish a Commercial Property Assessed Clean Energy Program (Program) to assist qualifying commercial property owners to make energy improvements; allow private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; establish that the surcharge on a property tax bill is treated as all other taxes and charges and that an unpaid surcharge shall be, until paid, a lien on the real property on which it is imposed; and generally amend the environmental sustainability law.

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

According to the Department of Environmental Protection, the level of data on the types of projects and commercial property owners eligible for this Program, the cost of the project, and the reduction in energy costs achieved by the owners are very limited and project/site specific. While there are over 4,200 commercial buildings that encompass over 150 million square feet in the County, it is difficult without available data on the demand for eligible projects and the amount of lending to determine with any certainty the economic impact of Bill xx-14.

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

To estimate the economic impact with any degree of certainty, the analysis requires the number of potential projects that will be constrained by the level of lending. At a minimum, a project that has been approved should achieve an economic benefit such that the cost savings from a reduction in energy consumption will exceed the cost of the project. However without specificity on the type of project and the cost savings, it is premature to determine the economic benefits of that project. Second, the total economic benefit to the County is also dependent on the amount of available financing by lenders.

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

It is expected that a fully functioning Commercial PACE program will incentivize increased construction activity and improve property values and may have additional positive economic impacts on income, employment, and investment in the County. However, as stated in item #2, the total economic effect will depend on the amount of financing available, the number of commercial owners and projects that are eligible for the Program, the costs of renovating and retrofitting a property, the costs of investing in an energy efficiency or renewable energy system and the operating costs of such a system over the life of the system, the reduction of energy

Economic Impact Statement

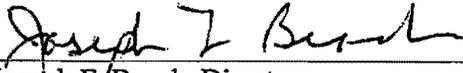
Bill xx-14, Commercial Property Assessed Clean Energy Program - Established

consumption and savings from that reduction, and the additional business opportunities and increase in employment by companies that supply equipment and material and companies that install such equipment and material. The level of detail necessary to ascertain the positive economic effect is limited, and as such, the total economic effect cannot be determined with any degree of certainty.

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 and Rob Hagedoorn, Finance;



Joseph F. Beach, Director
Department of Finance

10-14-14
Date

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
BILL 6-15 – COMMERCIAL PACE**

March 3, 2015

My name is Robert Hagedoorn, Chief Division of Fiscal Management, Department of Finance, and I am here to testify on behalf of County Executive Isiah Leggett in support of Bill 6-15.

This legislation amends the County Code to establish a Commercial Property Assessed Clean Energy (PACE) program in Montgomery County. This program assists qualifying commercial property owners with making energy improvements; allows private lenders that provide capital for a commercial loan provided under a local clean energy loan program to have annual loan payments collected by the County as a surcharge on a property tax bill; and establishes that the surcharge is treated as all other taxes and charges and that unpaid surcharge will be a lien on the real property.

PACE programs have been introduced in various jurisdictions in the country, including Washington DC, San Francisco, Los Angeles, Connecticut and Florida. Collectively, these jurisdictions have used PACE to unlock millions of dollars in energy efficiency and renewable energy investments. Montgomery County would, upon program launch, be part of this national initiative that makes energy efficiency and renewable energy improvements more affordable and provides greater security to lenders in terms of collection of loan payments. Such energy improvements provide environmental and economic benefits to the borrower and the County.

Pursuant to current law, the County Executive submitted a Commercial PACE Program Implementation Plan to the County Council on May 19, 2014. The Department of Finance worked closely with the Department of Environmental Protection, Department of General Services, County Attorney, and Public Financial Management (PFM), the County's consultant, to develop this Plan. This Plan conforms to Senate Bill 186, Clean Energy Loan Programs, adopted by the Maryland General Assembly during the 2014 legislative session. SB 186 enables counties to pass a local law to authorize Commercial PACE for private lenders; collect a surcharge on the property tax bill; and allow certain administrative fees to be charged to borrowers. Mortgage lender consent is required for all Commercial PACE loans.

Bill 6-15 reflects that Implementation Plan and we look forward to implementing this important environmental initiative. Thank you for the opportunity to testify.



**TESTIMONY ON
BILL 6-15, THE “COMMERCIAL
PROPERTY ASSESSED CLEAN ENERGY
PROGRAM”**

**Nicola Y. Whiteman, Esq.
Senior Vice President of Government Affairs
Apartment and Office Building Association of
Metropolitan Washington**

March 3, 2015

(21)

Good afternoon Councilmembers and staff. I am Nicola Whiteman, Senior Vice President of Government Affairs for the Apartment and Office Building Association of Metropolitan Washington (AOBA). AOBA is a non-profit trade association representing owners and managers of more than 57,000 apartment units and over 24 million square feet of office space in Montgomery County. I am pleased to testify today on Bill 6-15, the "Commercial Property Assessed Clean Energy Program."

I. BILL 6-15 PROPOSES AN INNOVATIVE SOLUTION FOR ACHIEVING ENERGY SAVINGS IN BUILDINGS.

The possibility of a new financing mechanism represents an exciting opportunity to significantly impact energy use in commercial buildings.¹ While building owners can (and many already have) implement low-cost measures to reduce their energy costs, many energy-efficiency projects require a significant financial investment. One must also consider that desirable energy-efficiency upgrades for older multifamily buildings can require cost-prohibitive solutions.² The financing model proposed by the legislation could allow building owners to move forward with "shovel ready" high impact energy efficiency projects. Notably, the legislation is drafted to finance a wide array of energy efficiency projects in commercial properties. The County's diverse building stock have varying project needs given factors such as differences in age, energy systems, and operating patterns.³ As drafted, any energy efficiency and/or energy

¹The definition of "commercial property" in 18A-33(a) includes both commercial office buildings and multifamily properties of a certain size. Section 18A-33(a) ("commercial property" means any real property located in the County that is either not designated for or intended for human habitation, or that is intended for human habitation as a multi-family building of 4 or more rental units.") See *Green Building Facts*, U.S. Green Buildings Council, Feb. 23, 2015, <http://www.usgbc.org/articles/green-building-facts>, copy of which is attached to AOBA's statement ("According to the U.S. Green Buildings Council, buildings account for 73% of electricity consumption and 38% of all CO2 emissions in the United States.")

²See Montgomery County, Maryland Commercial Building Energy Efficiency Policy Study, March 2013, (2013 Energy Report), page 9 ("... multifamily buildings hold greater technical potential than commercial buildings, both in total energy percent savings terms. They tend to be older, are more subject to market barriers, and are harder to finance for energy retrofits. It is apparent that to achieve the County's 25% goal, even on a technical basis, multifamily buildings would have to be a key part of any County policy and program suite.")

³See also 2013 Energy Report, page 7 acknowledging differences between and among commercial and residential buildings. ("Commercial and multifamily market segments present different challenges. The County will need to carefully consider

improvement “that is intended to decrease energy consumption or expand use of renewable energy sources” could potentially qualify for funding under the proposed PACE program. The broad language will permit funding of programs that meet the energy improvement needs of the County’s complex mix of commercial properties.

II. LENDER SUPPORT IS CRITICAL TO SECURING BUILDING OWNER PARTICIPATION AND THE SUCCESSFUL IMPLEMENTATION OF A PACE PROGRAM.

Section 18A-36(c) proposes to make the surcharge senior to a mortgage and all other liens on a property.⁴ Most mortgages prohibit the borrower from doing any act which would impair the security of the lender. Placing a surcharge on a property, which is senior to the mortgage, constitutes such an act and may place a property owner in default. To remedy this problem, the bill includes language similar to provisions applicable to District of Columbia and Virginia PACE programs, requiring the applicant to secure the mortgagee’s prior consent.⁵ See Bill 6-15 § 18-35(a)(2)(“The property owner must submit the following to the private lender or the County designated lender at the time of application for funding ... (A) express written consent of any holder of an existing mortgage or deed of trust on a qualified property.” This consent

targeting its policies and programs to gain the greatest energy savings, while also addressing the barriers and needs unique to each market segment. The Study found that both commercial and multifamily markets exhibit 100% characteristics that must be accounted for in policy and program design if they are to be successful. ... Commercial buildings such as offices, retail, and healthcare differ greatly from each other in terms of energy systems, operating patterns, ownership patterns, and financing structures.”)

⁴B6-15, Section 18A-36(c)(“The surcharge and any accrued interest or penalty constitutes a first lien on the real property to which the surcharge applies until paid. An unpaid surcharge will be, until paid, a lien on the qualified property on which it is imposed from the date it becomes payable.”)

⁵See DC Official Code 8-1778.42(a)(“To qualify for a loan from the National Capital Energy Fund, the property owner shall file with the administrator a loan application including the following: (7) Property owner certification that the Special Assessment will not violate any agreements with any other lender or provision of applicable lender consents...”); Va. Ann. Code § 15.2-958.3. Financing clean energy programs. E. (“A voluntary special assessment lien on real property other than a residential dwelling with fewer than five dwelling units or a condominium project as defined in § 55-79.2: 1. Shall have the same priority status as a property tax lien against real property, except that such voluntary special assessment lien shall have priority over any previously recorded mortgage or deed of trust lien only if (i) a written subordination agreement, in a form and substance acceptable to each prior lienholder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien in the land records where the property is located...”)

provision is necessary as many loan documents prohibit the borrower from assuming additional loans without the lender's consent.

While this consent provision will allow commercial property owners to avoid any potential default issues, it is unclear whether lenders are in fact granting their consent to building owners applying for PACE loans. AOBA encourages the Council and County Executive to solicit feedback from other jurisdictions with existing PACE programs to determine whether lenders are granting mortgagors' requests that they consent to the PACE assessment. In order to achieve meaningful participation by building owners, it is necessary that the County obtain lender support with specifications regarding what lenders will require of property owners if a lender is to approve modification of the loan document so that the property owner can proceed with the loan under the PACE program. Such specifications should thereafter be included in the legislation and any implementing regulations.

In the District of Columbia, which adopted legislation approving the development of a PACE program in 2010, AOBA members are continuing to meet with representatives of the DC PACE program administrator. Our mutually desired goal is to allay any property owner concerns about barriers which continue to discourage their participation in the PACE program. Here, in the County, we are working collaboratively with the County Executive to ensure the successful adoption and implementation of a program which allows for significant building owner participation and reduction of energy consumption and demand. In both jurisdictions, lender participation and consent is the focus of the stakeholder discussions.

III. CONCLUSION

AOBA welcomes the opportunity to continue working with the County on this endeavor and we will be happy to answer any questions at this time.

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OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Joseph Beach, Director
Department of Finance

VIA: Marc P. Hansen *Marc Hansen*
County Attorney

FROM: Scott R. Foncannon *Scott R. Foncannon*
Associate County Attorney

DATE: February 13, 2015

RE: Bill 6-15, Commercial Property Assessed Clean Energy Program - Established

I have had an opportunity to review Bill 6-15, Commercial Property Assessed Clean Energy Program – Established. This bill establishes a program that facilitates energy improvements for commercial properties within the County and requires repayment of the loan through a surcharge on the owner's property tax bill. The surcharge will be treated as a lien on the property and collected like all other County taxes. The County may select a County designated lender or private lenders may be utilized for the loans anticipated under this program. The loans must be used for energy efficiency or renewable energy improvements as defined in the bill and there are certain specified parameters within the bill for eligibility as well as the permitted amount of the loan.

Establishment of the Commercial Property Assessed Clean Energy Loan Program is authorized by Subtitle 11 of the Local Government Article, Annotated Code of Maryland. Section 1-1104, of the Local Government Article requires that an ordinance enacted under this law must provide that eligibility requirements include a requirement that the County give due regard to the property owners ability to repay a loan provided under the program and in a manner substantially similar to that required for a mortgage loan under Sections 12-127, 12-311, 12-409.1, 12-925, and 12-129 of the Commercial Law Article. This requirement should be included within the bill by amendment or within the regulations that are adopted to administer the program.

Joseph Beach
February 13, 2015
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The bill is otherwise within the authority of the Council and legally sufficient.

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Offices of the County Executive

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