OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

M E M O R A N D U M

October 29, 2021

TO: Tom Hucker, President
Montgomery County Council

FROM: Marc Elrich, County Executive

SUBJECT: Introduction of Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

It is my pleasure to transmit the attached legislation (XX-21, Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments) modifying the County's current C-PACE Financing program to reflect enhancements made to the state-enabling legislation (HB 517) as well as additional program enhancements including:

- Allowing water efficiency, environmental remediation, and resiliency measures as eligible projects, per recent changes to state-enabling legislation,
- Permitting twelve-month retroactive financing for eligible C-PACE measures, per recent changes to state-enabling legislation,
- Introducing a five-year pilot for increased loan-to-value amounts for existing and newly constructed buildings,
- Clarifying the new construction participation requirements to ensure projects that both meet and exceed building code up to 5 percent can access C-PACE financing; and
- Removing the County Designated Lender role from the County's C-PACE program, as the program has been established for seven years and this role is no longer necessary.

The County's C-PACE financing program was established in March 2015 and officially opened its doors in April 2016. In that time, thirteen projects totaling more than $10M have been financed by private capital funding for energy efficiency and renewable energy projects. In early 2021, the County was excited to select the Montgomery County Green Bank as the new C-PACE Program Manager, where building owners can now go to one organization for comprehensive financing options for building improvements.

I have attached a memorandum from DEP Director Adam Ortiz that provides more detailed information about the legislation.

If you have any questions, please contact David Crow in FIN at 240-777-8859 or David.Crow@montgomerycountymd.gov or Lindsey Shaw in DEP at 240-777-7754 or Lindsey.Shaw@montgomerycountymd.gov.

ME: ls

Enclosures: Memorandum from Adam Ortiz, the Director of Department of Environmental Protection

CC: David Crow, Fiscal Projects Manager, Department of Finance
Lindsey Shaw, Manager, Department of Environmental Protection
Stan Edwards, Division Chief, Department of Environmental Protection
Adriana Hochberg, Office of the County Executive

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Marc Elrich
County Executive

Adam Ortiz
Director

MEMORANDUM

October 22, 2021

TO: Marc Elrich, County Executive

FROM: Adam Ortiz, Director
Department of Environmental Protection

SUBJECT: Introduction of Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

It is my pleasure to transmit the attached legislation (XX-21, Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments) to modify the County's current C-PACE Financing program to reflect enhancements made to the state-enabling legislation (HB 517) as well as additional program enhancements including:

- Allowing water efficiency, environmental remediation, and resiliency measures as eligible projects, per recent changes to state-enabling legislation,
- Permitting twelve-month retroactive financing for eligible C-PACE measures, per recent changes to state-enabling legislation,
- Introducing a five-year pilot for increased loan-to-value amounts for existing and newly constructed buildings,
- Clarifying the new construction participation requirements to ensure projects that both meet and exceed building code up to 5 percent can access C-PACE financing; and
- Removing the County Designated Lender role from the County's C-PACE program, as the program has been established for six years and this role is no longer necessary.

The County's C-PACE financing program was established in March 2015 and officially opened its doors in April 2016. Since then, thirteen projects totaling more than $10M have been financed by private capital funding for energy efficiency and renewable energy projects. In early 2021, the County selected the Montgomery County Green Bank as the new C-PACE Program Manager, where building owners can now go to one organization for comprehensive financing options for building improvements.

The County's 2018 greenhouse gas inventory shows that commercial building energy use accounts for twenty-six percent of community-wide emissions.[1] As described in the County's Climate Action Plan,[2] the unprecedented challenge of climate change will require creative solutions, particularly in paying for climate action. The expansion of the C-PACE program as described below leverages this existing tool for private property owners to make their buildings more energy efficient, thus improving operating costs and reducing greenhouse gas emissions.

Additional Eligible Project Types: To align with the recent changes to the C-PACE state enabling legislation (HB 517) to allow for resiliency measures, the County proposes to amend C-PACE project eligibility to include broad categories. These include climate resiliency, climate adaptation, water conservation, environmental health and safety upgrades—and removing the prescriptive and limited list of measures that currently exist in the C-PACE law.

Climate resiliency is an important aspect of many C-PACE programs nationally, and resiliency is being heavily promoted at the Maryland state level. Climate resiliency is a strong risk mitigation tool. The risks associated with climate change are not only multiplying, but they are also disproportionately affecting more vulnerable populations. Montgomery County is not immune to extreme weather events exacerbated by climate change, and C-PACE can be a tool to effectively finance solutions rather than absorb the payout costs of insurance afterward. Additionally, broadening the eligible measures list provides flexibility to add measures relating to climate that do not fit in the current legislative definition of clean energy. It is important to set up the program to be responsive to the County's declared climate emergency, particularly climate resiliency.

Pilot Program for Higher Loan-to-Value Amounts: Bill XX-21 proposes a new five-year pilot program for larger project size eligibility for existing building and new construction projects:

- Existing Buildings: Increase the Loan-to-Value ratio from 20% to 30%
- New Construction Meeting or Exceeding Building Code up to 5%: Increase the Loan-to-Value ratio from 15% to 20%
- New Construction Exceeding Building Code by 5% or greater: Increase the Loan-to-Value ratio from 20% to 30%

The Debt-to-Value ratios remain unchanged from the current C-PACE allowance of debt carried by the property such that the property is not overleveraged. After the five-year pilot period, the C-PACE program would revert to the original loan-to-value ratios unless extended by the Director of Finance.

Nationally, PACE loan-to-value ratios fall within the range of 20% -35%. A comparison of other jurisdictions appears below:

Jurisdiction	Maximum C-PACE lien to value ratio
New York	35%
Delaware	No maximum
Washington, D.C.	35% (80% total LTV)
Arlington, VA	30%
MD-PACE (all MD except MC, PG, and Baltimore)	Capital provider determined
Baltimore	20%

[1] Montgomery County's GHG emissions inventory, 2018. https://www.montgomerycountymd.gov/green/climate/ghg-inventory.html

[2] Montgomery County's Climate Action Plan, 2021. https://www.montgomerycountymd.gov/climate

Increasing project values would be consistent with other markets and thus provide more ease for contractors and capital providers to navigate neighboring jurisdictions. Increasing project sizes can drive down average transaction costs and efforts for building owners and lenders. Moreover, increasing project values and allowing for additional sustainability building upgrades would be consistent with current climate goals for the County's private building stock.

Retroactive Financing: Also permitted by HB 517, retroactive financing has been allowed in the state of Maryland. Bill XX-21 amends the County's C-PACE law to permit retroactive financing. This allows building owners who have made eligible energy efficiency and renewable energy upgrades to access C-PACE program financing up to twelve months after the project is completed.

Retroactive financing is used in twelve other state programs with one-to-three-year lookback periods. In Maryland, retroactive C-PACE is available in the City of Baltimore and Prince George's County. A comparison of other jurisdictions appears below:

California - CSCDA	3 years, longer on case-by-case basis
California - WRCOG	3 years
New York (Energize)	30 months +
Pennsylvania (new program)	24 months
Michigan (Lean & Green)	3 years+
Florida (FRED)	3 years
Ohio (various programs)	3 years+
Kentucky (KY-PACE)	24 months
Utah (Utah PACE)	3 years
Rhode Island	3 years
Wisconsin (PACE Wisconsin)	30 months
Texas (Texas PACE Authority)	Not available
District of Columbia	case-by-case basis
Connecticut	One year
Cook County (Chicago) - *just released	Since 2017
Maryland	Baltimore project (Greenworks closed on January 2021). No timeframe specified.

Commercial entities face a variety of challenges in building maintenance, including emergency measures. When facing emergency maintenance/replacement issues, there is often not enough time to submit a C-PACE application ahead of time and wait for the County's standard ten-day application approval time. Retroactivity can also provide an economic recovery opportunity in response to COVID-19. Commercial and multi-family properties that have recently had qualifying energy work done may find themselves with cash preservation goals to cover working capital needs. Retroactive C-PACE allows property owners to replace more expensive debt with C-PACE's low-rate, long-term financing repaid through the property tax bill. Lastly, retroactive financing allows the C-PACE program to address equity barriers that can exist with financing programs, as described in the Climate Action Plan. If a commercial entity did not have the time/resources to investigate C-PACE at the time of an improvement, the opportunity to retroactively utilize C-PACE would provide a more efficient and equitable capital source

Clarification of New Construction Program Participation: Presently, the County legislation section on new construction eligibility refers exclusively to exceeding code. The proposed amendments also provide for properties that meet the relevant building code to access C-PACE financing.

Existing buildings can already use C-PACE to improve current conditions to code and achieve energy savings. Thus, offering this for new construction would be the equivalent of what is already offered for existing buildings. Developers of new construction can obtain a lower weighted average cost of capital using C-PACE than alternative commercial sources. As the County implements the 2018 International Green Construction Code, access to C-PACE to meet this sustainability overlay code will be a valuable incentive for developers in Montgomery County.

Removal of County Designated Lender: To assist with the initial development of the C-PACE program, the County established a County Designated Lender role to serve alongside the Program Manager role to provide building owners with straightforward and County-contracted access to capital. This was intended to build a strong pipeline of projects and give building owners access to a lender experienced with C-PACE financing. In practice, the presence of a County Designated Lender created confusion with the open-lending C-PACE model we intended to create. However, with the County's C-PACE program in its sixth year, the role of County Designated Lender is no longer needed now that the Montgomery County Green Bank is the C-PACE Program Manager. The Green Bank brings established and trusted relationships with local lenders willing and able to lend private capital in the County's open-market C-PACE program.

These changes are likely to increase C-PACE deal flow, and as a result, improve climate outcomes for the County. As with any effort to increase private capital deployment, a greater number of projects raises the potential of defaults. C-PACE, however, has certain built-in risk mitigation aspects, including senior lender consents, Capital Provider underwriting standards, non-acceleration, and individual project approvals, contributing to its strength in outperforming commercial finance defaults.

This legislation is strongly supported by the County's Climate Change Officer and the Departments of Environmental Protection (DEP) and Finance (FIN), primarily because these amendments provide a cost-effective approach to meeting our ambitious climate goals. This legislation has also been reviewed by the County Attorney for form and legality.

DEP requests that these amendment to the C-PACE Financing program are transmitted to the County Council on behalf of the County Executive.

If you have any questions, please contact David Crow in FIN at 240-777-8859 or David.Crow@montgomerycountymd.gov or Lindsey Shaw in DEP at 240-777-7754 or Lindsey.Shaw@montgomerycountymd.gov.

Fiscal Impact Statement
Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

1. **Legislative Summary.**

   Bill XX-21 updates the County's Commercial Property Assessed Clean Energy (C-PACE) financing program to reflect the changes made to the state-enabling legislation (HB 517 of 2021). The Bill allows for 12-month retroactive financing for eligible C-PACE measures; introduces a 5-year pilot for increased loan-to-value amounts for existing and newly constructed buildings; clarifies new construction participation requirements to ensure projects that both meet and exceed code up to 5 percent can access C-PACE financing; and removes the County Designated Lender role from the County's C-PACE program.

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 bill is not expected to have an impact on County revenues or expenditures.

   Implementation of the legislation will be performed by the new Program Manager at the Montgomery County Green Bank and will thus not directly impact the County government's budget. Capital funding for C-PACE projects comes from the private sector.

   C-PACE projects may result in buildings with a higher assessed value, which may positively impact tax receipts, but this impact cannot be reliably estimated at this time.

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

   See the response to Question #2.

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

   Non applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   The bill is not expected to impact County IT or ERP systems.

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

   Future spending is not authorized under the bill.

7. **An estimate of the staff time needed to implement the bill.**

   Staff time needed to implement the Bill is dependent upon the number of C-PACE applications received as a result of these program changes. However, it is expected that the existing staff in the Departments of Finance and Environmental Protection will continue to oversee the C-PACE program and incoming applications.

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

   Implementation of the bill is not expected to materially impact staff responsibilities.

9. **An estimate of costs when an additional appropriation is needed.**

   No additional appropriations would be required to implement the bill.

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

    The bill is not expected to have an impact on County revenues or expenditures.

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

    Not applicable.

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

    County staff that oversees the C-PACE program will continue to do so. Capital funding for C-PACE projects comes from the private sector.

13. **Other fiscal impacts or comments.**

    The expansion of the C-PACE program provides a tool for private property owners to make their buildings more energy efficient, thus improving building operating costs and reducing greenhouse gas emissions. Because implementation of this bill does not require additional County resources, this is a very cost-effective strategy to help the County meet its ambitious climate goals.

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

David Crow, Department of Finance
Stan Edwards, Department of Environmental Protection
Lindsey Shaw, Department of Environmental Protection
Lindsay Lucas, Office of Management and Budget

	9/21/21
Jennifer Bryant, Director **Office of Management and Budget**	**Date**

Bill No. XX-21
Concerning: Environmental Sustainability - Commercial Property Assessed Clean Energy Program - Revisions
Revised: [date] Draft No. [#]
Introduced: [date]
Expires: [18 mos. after intro]
Enacted: [date]
Executive: [date signed]
Effective: July 1, 2020
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) update the County's C-PACE financing program to reflect the changes made to the state-enabling legislation (HB 517) that allow water efficiency, environmental remediation, and resiliency measures as eligible projects, and retroactive financing;
(2) allow for 12-month retroactive financing for eligible C-PACE measures;
(3) introduce a 5-year pilot for increased loan-to-value amounts for existing and newly constructed buildings;
(4) clarify new construction participation requirements to ensure projects that both meet and exceed code up to 5 percent can access C-PACE financing;
(5) remove the County Designated Lender role from the County's C-PACE program; and
(6) generally revise County law regarding environmental sustainability.

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

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

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

Article 5. COMMERICAL 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.

Climate Related Improvements or *Improvements* include measures that address:

(1) renewable energy,

(2) energy and water efficiency,

(3) environmental remediation,

(4) grid resilience; or

(5) property resilience.

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 more than 4 rental units.

Commercial Property Assessed Clean Energy Program or *Program* means a program that facilitates Climate Related Improvements [energy improvements] and requires repayment through a surcharge on the owner's property tax bill.

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

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

Department means the Department of Finance.

Director means the Director of the Department or the Director's designee.

Energy efficiency [*and/or renewable energy improvement* or *improvement]* means any equipment, device, or material that is intended to decrease energy consumption or [expand] use [of renewable energy sources, including;] less energy to perform the same task.

[(1) insulation in any wall, roof, floor, foundation, or heating and cooling distribution system;

(2) a storm window or door, multi-glazed window or door, heat-absorbing or heat-reflective glazed and coated window and door system, or additional glazing, reduction in glass area, and other window and door system modification that reduces energy consumption;

(3) an automated energy control system;

(4) a heating, ventilating, or air-conditioning and distribution system modification or replacement;

(5) caulking, weather-stripping, and air sealing;

(6) replacement or modification of a lighting fixture to reduce the energy use of the lighting system;

(7) an energy recovery system;

(8) a day lighting system;

(9) the installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(10) a measure that reduces the usage of water or increases the efficiency of water usage;

(11) any other installation or modification of equipment, device, or other material intended to decrease energy consumption or expand the use of a renewable energy source;

(12) any measure or system that makes use of or expands a renewable source of energy, including solar water heater, solar thermal electric, photovoltaic's, wind, biomass, hydroelectric, geothermal electric, geothermal heat pumps, anaerobic digestion, tidal energy, wave energy, ocean thermal, fuel cells using renewable fuels, and geothermal direct-use; or

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

Environmental remediation means any project that is intended to remove environmental or health hazards, including addressing indoor air quality and building material contaminants.

Grid resilience means any capital improvement investment that addresses reliability improvements during electrical service disruptions and that are consistent with Public Service Commission regulations on interconnection and franchising.

Private lender means a lender selected by the property owner to provide loan funds to the property owner for an [improvement] Improvement.

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

Property resilience means any built or nature-based improvement that increases the capacity of a property to withstand natural disasters and the effects of climate change.

Qualified property means any new or existing commercial real property that meets the eligibility criteria for the Program.

Renewable energy [*source*] means [a source of] energy that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. A renewable energy source does not include petroleum, nuclear, natural gas, or coal.

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

(1) non-hazardous, organic biomass material;

(2) solar electric and solar thermal energy;

(3) wind energy;

(4) geothermal energy; and

(5) methane gas captured from a landfill.]

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

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

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

(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] a Climate Related Improvement. The agreement must provide for the repayment of the loan for the [improvement] Improvement and any cost of administering the Program through a [surcharge] 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] Climate Related Improvement. The third-party lender must submit a request for collection of each [surcharge] Surcharge amount to the County designated program manager or, if there is no County designated program manager, to the Department no later than April 1 of each year.

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

(c) *County designated program manager*. The Director may enter into an agreement with a County designated program manager. The County designated program manager must notify the Department of the amount of the [surcharge] Surcharge for each account to be collected on the real property tax bill for that year's levy no later than May 1 of each year, and in a format approved by the Department. The County designated program manager will receive the collections from the County, reconcile the collected and billed [surcharge] Surcharge for each account, and remit the [surcharge] Surcharge amount to the [County designated lender or] private lender. The County designated program manager must report annually to the County on the participants in the Program by name, property address, property tax account number, amount of each [surcharge] Surcharge billed, collected by the County, and remitted to the private lender, description of project, any administrative fees, the amount of each loan, the amount of each loan balance, and the term of each loan. This report must be submitted to the Department no later than February 15 of each year pertaining to activity in the prior calendar year.

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

Sec. 18A-35. Eligibility.

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

(a) *Eligibility*.

(1) The property must be a qualified property.

(2) Before any loan is approved under the Program, the County must give due regard to the property owner's ability to repay a loan in a manner substantially similar to that required for a mortgage loan under Sections <u>1-401,</u> 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the Maryland Code. <u>The County has authority to deny approval of any loan under the Program that, in its sole determination, does not meet these Sections of the Maryland Code.</u>

(3) 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;

(B) verification that there are no delinquent fees, taxes, water or sewer charges<u>, liens,</u> or other special assessments on the qualified property; and

(C) confirmation that<u>:</u>

<u>(i)</u> the proposed [improvements] <u>Climate Related Improvement</u> will be properly permitted and

permanently affixed to the qualified property and comply with all applicable State and federal statutes and regulations, as determined by the appropriate regulatory authority[.]; or

(ii) final inspection of an installed Climate Related Improvement has occurred within a one-year (12 months) period immediately preceding the date of Program application.

(4) For new commercial construction, the property must be designed to meet or exceed the energy performance required by the County building code that is in effect at the time a property owner applies to participate in the Program.

(5) The loan amount under this Program must meet the following criteria:

(A) [For existing] Existing commercial construction[:]. This subsection, 18A-35(a)(5)(A), shall be in effect for five (5) calendar years after the effective date of this amendment unless further legislative action is taken to extend it. After such date, loan amounts are subject to the conditions set by subsection 18A-35(a)(5)(C) or may be set at a higher amount subject to Director approval.

(i) The loan amount must be at least $5,000 and not more than [20%] 30% of either the full cash value or the appraised value of the qualified property.

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

(iii) The full cash value is determined by the Maryland State Department of Assessments and Taxation. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(B) For new commercial construction[:]. This subsection, 18A-35(a)(5)(B), shall be in effect for five (5) calendar years after the effective date of this amendment unless further legislative action is taken to extend it. After such date, loan amounts are subject to the conditions set by subsection 18A-35(a)(5)(D) or may be set at a higher amount subject to Director approval.

(i) If a qualified property is designed to meet or exceed the energy performance required by the County building code by no more than 5%, the maximum loan amount must not exceed [15%] 20% of the full cash value or appraised value of the qualified property.

(ii) If a qualified property is designed to exceed the energy performance required by the County building code by 5% or greater, the maximum loan amount must not exceed [20%] 30% of the full cash value or appraised value of the qualified property.

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

(iv) The full cash value and appraised value of the property must be determined based on the estimated value of the property [if construction is] as completed. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(C) Existing commercial construction.

(i) The loan amount must be at least $5,000 and not more than 20% of either the full cash value or the appraised value of the qualified property.

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

(iii) The full cash value is determined by the Maryland State Department of Assessments and Taxation. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(D) For new commercial construction.

(i) If a qualified property is designed to meet or exceed the energy performance required by the County building code by no more than 5%, the maximum loan amount must not exceed 15% of the full cash value or appraised value of the qualified property.

(ii) If a qualified property is designed to exceed the energy performance required by the County building code by 5% or greater, the maximum loan amount must not exceed 20% of the full cash value or appraised value of the qualified property.

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

(iv) The full cash value and appraised value of the property must be determined based on the estimated value of the property as completed. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(b) *Property assessed clean energy surcharge*.

(1) The property owner of qualified property must agree to repay the amount financed through a [surcharge] Surcharge levied on the County's real property tax bill for the qualified property.

(2) A [surcharge] Surcharge must be imposed under a written agreement between the [County designated or] private lender and the County. The [surcharge] Surcharge will be recorded in land records of the County, at the expense of the owner, within 30 days of the execution of a clean energy loan financing agreement.

(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:

(A) the property owner's ability to repay the Property Assessed Clean Energy loan in a manner substantially similar to that required for a mortgage loan;

(B) there are no delinquent taxes, special assessments, liens, or water or sewer charges on the qualified property;

(C) there are no delinquent assessments on the qualified property under the Program;

(D) existing mortgage or deed of trust lender consent;

(E) 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) loan to value documentation; and

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

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

Sec. 18A-36. Payment of surcharge; lien.

(a) The County must collect the amount financed through a [surcharge] Surcharge on the property owner's real property tax bill and forward payments received by the County to the County designated program manager or, if there is no County designated program manager, to the lender no later than 30 days after the payment due dates for real property taxes. Payment due dates for semi-annual real property taxes are September 30 for the first installment and December 31 for the second installment, and for annual real property taxes the payment due date is September 30.

(b) After receiving written notice from the County designated program manager of the execution of a clean energy loan financing agreement, the County must add the [surcharge] Surcharge to the property tax bill.

(c) If the property owner sells the qualified property, the buyer must continue to pay the [surcharge] Surcharge levied on the annual property tax bill.

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

Sec. 18A-37. Regulations; annual report.

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

(b) The Executive must submit an annual report to the County Council by March 15 of each year describing program participation, number and dollar value of [surcharge] Surcharge billed and collected, and other relevant information pertaining to the prior calendar year.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Sidney Katz, President, County Council		Date

Approved:

Marc Elrich, County Executive		Date

This is a correct copy of Council action.

Selena Mendy Singleton, Clerk of the Council		Date

Bill No. XX-21
Concerning: Environmental Sustainability - Commercial Property Assessed Clean Energy Program - Revisions
Revised: [date] Draft No. [#]
Introduced: [date]
Expires: [18 mos. after intro]
Enacted: [date]
Executive: [date signed]
Effective: July 1, 2020
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) update the County's C-PACE financing program to reflect the changes made to the state-enabling legislation (HB 517) that allow water efficiency, environmental remediation, and resiliency measures as eligible projects, and retroactive financing;
(2) allow for 12-month retroactive financing for eligible C-PACE measures;
(3) introduce a 5-year pilot for increased loan-to-value amounts for existing and newly constructed buildings;
(4) clarify new construction participation requirements to ensure projects that both meet and exceed code up to 5 percent can access C-PACE financing;
(5) remove the County Designated Lender role from the County's C-PACE program; and
(6) generally revise County law regarding environmental sustainability.

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

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

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

Article 5. COMMERICAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM.

18A-33. Definitions.

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.

Climate Related Improvements or *Improvements* include measures that address:

(1) renewable energy,

(2) energy and water efficiency,

(3) environmental remediation,

(4) grid resilience; or

(5) property resilience.

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 more than 4 rental units.

Commercial Property Assessed Clean Energy Program or *Program* means a program that facilitates Climate Related Improvements and requires repayment through a surcharge on the owner's property tax bill.

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

Department means the Department of Finance.

Director means the Director of the Department or the Director's designee.

Energy efficiency means any equipment, device, or material that is intended to decrease energy consumption or use less energy to perform the same task.

Environmental remediation means any project that is intended to remove environmental or health hazards, including addressing indoor air quality and building material contaminants.

Grid resilience means any capital improvement investment that addresses reliability improvements during electrical service disruptions and that are consistent with Public Service Commission regulations on interconnection and franchising.

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

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

Property resilience means any built or nature-based improvement that increases the capacity of a property to withstand natural disasters and the effects of climate change.

Qualified property means any new or existing commercial real property that meets the eligibility criteria for the Program.

Renewable energy means energy that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. A renewable energy source does not include petroleum, nuclear, natural gas, or coal.

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

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

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

(b) *Third-party lender.*

(1) The Director may enter into an agreement with a third-party lender that funds a loan for a Climate Related 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 Climate Related Improvement. The third-party lender must submit a request for collection of each Surcharge amount to the County designated program manager or, if there is no County designated program manager, to the Department no later than April 1 of each year.

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

(c) *County designated program manager.* The Director may enter into an agreement with a County designated program manager. The County designated program manager must notify the Department of the amount of the Surcharge for each account to be collected on the real property tax bill for that year's levy no later than May 1 of each year, and in a format approved by the Department. The County designated program manager will receive the collections from the County, reconcile the collected and billed Surcharge for each account, and remit the Surcharge amount to the private lender. The County designated program manager must report annually to the County on the participants in the Program by name, property address, property tax account number, amount of each Surcharge billed, collected by the

County, and remitted to the lender, description of project, any administrative fees, the amount of each loan, the amount of each loan balance, and the term of each loan. This report must be submitted to the Department no later than February 15 of each year pertaining to activity in the prior calendar year.

Sec. 18A-35. Eligibility.

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

(a) *Eligibility*.

(1) The property must be a qualified property.

(2) Before any loan is approved under the Program, the County must give due regard to the property owner's ability to repay a loan in a manner substantially similar to that required for a mortgage loan under Sections 1-401, 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the Maryland Code. The County has authority to deny approval of any loan under the Program that, in its sole determination, does not meet these Sections of the Maryland Code.

(3) The property owner must submit the following to the 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;

(B) verification that there are no delinquent fees, taxes, water or sewer charges, liens, or other special assessments on the qualified property; and

(C) confirmation that:

(i) the proposed Climate Related Improvement will be properly permitted and permanently affixed to the qualified property and comply with all applicable State and federal statutes and regulations, as determined by the appropriate regulatory authority; or

(ii) final inspection of an installed Climate Related Improvement has occurred within a one-year (12 months) period immediately preceding the date of Program application.

(4) For new commercial construction, the property must be designed to meet or exceed the energy performance required by the County building code that is in effect at the time a property owner applies to participate in the Program.

(5) The loan amount under this Program must meet the following criteria:

(A) Existing commercial construction. This subsection, 18A-35(a)(5)(A), shall be in effect for five (5) calendar years after the effective date of this amendment unless further legislative action is taken to extend it. After such date, loan amounts are subject to the conditions set by subsection 18A-35(a)(5)(C) or may be set at a higher amount subject to Director approval.

(i) The loan amount must be at least $5,000 and not more than 30% of either the full cash value or the appraised value of the qualified property.

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

(iii) The full cash value is determined by the Maryland State Department of Assessments and Taxation. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(B) For new commercial construction. This subsection, 18A-35(a)(5)(B), shall be in effect for five (5) calendar years after the effective date of this amendment unless further legislative action is taken to extend it. After such date, loan amounts are subject to the conditions set by subsection 18A-35(a)(5)(D) or may be set at a higher amount subject to Director approval.

(i) If a qualified property is designed to meet or exceed the energy performance required by the County building code by no more than 5%, the maximum loan amount must not exceed 20% of the full cash value or appraised value of the qualified property.

(ii) If a qualified property is designed to exceed the energy performance required by the County building code by 5% or greater, the maximum loan amount must not exceed 30% of the full cash value or appraised value of the qualified property.

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

(iv) The full cash value and appraised value of the property must be determined based on the estimated value of the property as completed. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(C) Existing commercial construction.

(i) The loan amount must be at least $5,000 and not more than 20% of either the full cash value or the appraised value of the qualified property.

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

(iii) The full cash value is determined by the Maryland State Department of Assessments and Taxation. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(D) For new commercial construction.

(i) If a qualified property is designed to meet or exceed the energy performance required by the County building code by no more than 5%, the maximum loan amount must not exceed 15% of the full cash value or appraised value of the qualified property.

(ii) If a qualified property is designed to exceed the energy performance required by the County building code by 5% or greater, the maximum loan amount must not exceed 20% of the full cash value or appraised value of the qualified property.

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

(iv) The full cash value and appraised value of the property must be determined based on the estimated value of the property as completed. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(b) *Property assessed clean energy surcharge.*

(1) The property owner of qualified property must agree to repay the amount financed through a Surcharge levied on the County's real property tax bill for the qualified property.

(2) A Surcharge must be imposed under a written agreement between the private lender and the County. The Surcharge will be recorded in land records of the County, at the expense of the owner, within 30 days of the execution of a clean energy loan financing agreement.

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

(A) the property owner's ability to repay the Property Assessed Clean Energy loan in a manner substantially similar to that required for a mortgage loan;

(B) there are no delinquent taxes, special assessments, liens, or water or sewer charges on the qualified property;

(C) there are no delinquent assessments on the qualified property under the Program;

(D) existing mortgage or deed of trust lender consent;

(E) 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) loan to value documentation; and

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

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

Sec. 18A-36. Payment of surcharge; lien.

(a) The County must collect the amount financed through a Surcharge on the property owner's real property tax bill and forward payments received by the County to the County designated program manager or, if there is no County designated program manager, to the lender no later than 30 days after the payment due dates for real property taxes. Payment due dates for semi-annual real property taxes are September 30 for the first installment and December 31 for the second installment, and for annual real property taxes the payment due date is September 30.

(b) After receiving written notice from the County designated program manager of the execution of a clean energy loan financing agreement, the County must add the Surcharge to the property tax bill.

(c) If the property owner sells the qualified property, the buyer must continue to pay the Surcharge levied on the annual property tax bill.

(d) 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. The Surcharge will accrue interest and penalty and will be treated and collected like all other County property taxes. Any delinquency will be collected through the County Tax Sale process. The provisions of Title 14, Subtitle 8 of the Tax – Property Article of the Maryland Code that apply to a tax lien will also apply to the lien created under this law. Any delinquent Surcharge collected through the County Tax Sale process must be forwarded to the County designated program manager or, if there is no County designated program manager, to the lender no later than 30 days after the payment was received.

Sec. 18A-37. Regulations; annual report.

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

(b) The Executive must submit an annual report to the County Council by March 15 of each year describing program participation, number and dollar value of Surcharge billed and collected, and other relevant information pertaining to the prior calendar year.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Sidney Katz, President, County Council　　　　Date

Approved:

Marc Elrich, County Executive　　　　Date

This is a correct copy of Council action.

Selena Mendy Singleton, Clerk of the Council　　　　Date