

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

July 16, 2024
Legislative Session Day

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July 16, 2024

RECEIVED
CLERK, CIRCUIT COURT
CODE HOME RULE
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BILL NO. 6-2024
KENT COUNTY

INTRODUCED BY: Ronald H. Fithian, President of the Board of County Commissioners for Kent County, Maryland.

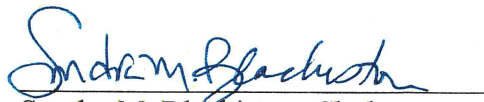
AN ACT to amend Chapter 152 Taxation Article VII Clean Energy Loan Program, §§ 152- 30, 152-31, and 152-32 of the Code of Public Local Laws of Kent County, Maryland FOR THE PURPOSE of defining certain terms: establishing a Clean Energy Loan Program for commercial property owners; establishing the scope of and eligibility for the Clean Energy Loan Program; providing for qualifying criteria; establishing a calculation of the clean energy loan surcharge, providing for a recorded notice; providing for the collection of loan payments; establishing default procedures; providing for financing or refinancing of Qualifying Projects under the Clean Energy Loan Program; providing for the application of this Act; and generally related to the Clean Energy Loan Program and real property taxes as consistent with provisions and the authority of the Annotated State Code of Maryland, Local Government Article, §1-1102.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


Ronald H. Fithian, President

INTRODUCED, read first time, July 16, 2024, ordered posted and public hearing scheduled on July 30, 2024, at 6:00 p.m. in the County Commissioners Hearing Room, R. Clayton Mitchell, Jr., Kent County Government Center, 400 High Street, Chestertown, Maryland.

By order of:


Sondra M. Blackiston, Clerk

PUBLIC HEARING

HAVING been posted and notice of the time and place of the hearing and copies having been made available to the public and the press, a public hearing was held on July 30, 2024. Reported favorably ~~with~~[without] amendments; read a second time and ordered to be considered on August 20, 2024, a legislative session day.

A BILL ENTITLED CHR 6-2024 CLEAN ENERGY LOAN PROGRAM

SECTION 1. NOW THEREFORE BE IT ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND, that Chapter 152, Article VII, is hereby amended as follows:

ARTICLE VII CLEAN ENERGY LOAN PROGRAM

§152-30. Clean Energy Loan Program.

(A) Definitions. In this ~~subsection~~ **SUBTITLE**, the following words have the meanings indicated:

- (1) **"ACT" MEANS §§1-1101 ET. SEQ. OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED STATE CODE OF MARYLAND.**
- (2) "Clean Energy Financing Agreement" means an agreement between a property owner and a Clean Energy Lender providing for the terms and conditions of a Clean Energy Loan.
- (3) "Clean Energy Lender" means ~~a private lender providing a clean energy loan.~~ **A CAPITAL PROVIDER THAT PROVIDES LOANS TO PROPERTY OWNERS TO FINANCE QUALIFYING PROJECTS, APPROVED BY MARYLAND CLEAN ENERGY CENTER, AND SUCH CAPITAL PROVIDER'S SUCCESSORS, TRANSFERRES, AND ASSIGNEES.**
- (4) "Clean Energy Loan" means any loan made by a **CLEAN ENERGY** ~~private~~ Lender to a property owner under the Clean Energy Loan Program.
- (5) "Clean Energy Loan Obligation" means all indebtedness and obligations of a property owner to a Clean Energy Lender under a Clean Energy Financing Agreement.
- (6) "Clean Energy Loan Program Administrator" means any person or entity selected by the County to manage the Clean Energy Loan Program.
- (7) "Commercial Property" ~~has the meaning stated in the Local Government Article, §§~~

~~1-1101 et. seq., of the State Code.~~ **THIS MEANS ANY REAL PROPERTY AS DEFINED IN THE ACT, INCLUDING RESIDENTIAL DWELLINGS CONTAINING MORE THAN FOUR SINGLE-DWELLING UNITS.**

- (8) "Property Owner" means an **THE** owner of **QUALIFIED** commercial property, as defined in this subsection.
- (9) **“LOCAL GOVERNMENT ARTICLE” MEANS THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS IT MAY BE AMENDED.**
- (10) **“QUALIFYING PROJECTS” MEANS PROJECTS AS DEFINED IN THE ORDINANCE FOR KENT COUNTY.**
- (11) **“SURCHARGE” MEANS THE ASSESSMENT LEVIED BY THE COUNTY ON A PROPERTY OWNER'S PROPERTY TAX BILL TO COLLECT CLEAN ENERGY LOAN PROGRAM PAYMENTS OWED TO A CLEAN ENERGY LENDER BY THE PROPERTY OWNER AND COSTS OF ADMINISTERING THE CLEAN ENERGY LOAN PROGRAM IN ACCORDANCE WITH THE ACT AND AS AUTHORIZED BY THE COUNTY LEGISLATION.**
- (12) **“SURCHARGE LIEN” MEANS THE LIEN AUTOMATICALLY ESTABLISHED UPON THE COUNTY'S LEVY OF THE SURCHARGE ON THE PROPERTY TAX BILL.**

(B) Program. There is a Clean Energy Loan Program to finance ~~energy efficiency projects and renewable energy projects with an electric generating capacity of not more than 100 kilowatts.~~ **QUALIFYING PROJECTS AS PROVIDED IN THE ACT.**

(C) Rules and Regulations. The Director of Finance may adopt rules and regulations to administer the Clean Energy Loan Program consistent with this subtitle.

(D) Program Administrator. The County Commissioners of Kent County may enter into an agreement with a private entity **OR STATE INSTRUMENTALITY** to administer the Clean Energy Loan Program.

(E) Scope. Commercial property owners are eligible to participate in the Clean Energy Loan Program for non-accelerating loans greater than \$25,000.

(F) Eligibility. In order to be eligible for a Clean Energy Loan, the property owner shall:

(1) Have a 100% ownership interest in the property located in Kent County for which ~~improvements~~ **PROJECTS** are being made; **PROPOSED.**

(2) Demonstrate that the most recent property taxes, assessments, and charges on the property

have been paid;

- (3) Provide a copy of written notice to all current holders of a mortgage or deed of trust who have a priority recorded lien on the property and written proof of express consent to the Clean Energy Loan as a priority lien by all current holders of a mortgage or deed of trust on the property **THAT IS TO BE FINANCED UNDER THE CLEAN ENERGY LOAN PROGRAM**; and
- (4) Establish that the owner of the commercial property is able to repay the loan provided under the Clean Energy Loan Program, in a manner substantially similar to that required for a mortgage loan under §§ 12-127, 12-311, 12-409.1, 12- 925, and 12-1029 of the Commercial Law Article of the **ANNOTATED State Code OF MARYLAND**.

(G) Qualifying Improvements. The following improvements, either new or replacement, qualify as energy efficiency or renewable energy projects under the Clean Energy Loan Program:

- (1) ~~solar energy equipment~~; **ENERGY AND WATER EFFICIENCY PROJECTS**;
- (2) **RENEWABLE ENERGY PROJECTS INCLUDING BUT NOT LIMITED TO SOLAR ENERGY EQUIPMENT**, geothermal energy devices, **AND WIND ENERGY SYSTEMS**;
- (3) ~~wind energy systems~~; **ENVIRONMENTAL REMEDIATION PROJECTS, WHICH MEANS A PROJECT INTENDED TO REMOVE ENVIRONMENTAL OR HEALTH HAZARDS, AND INCLUDING PROJECTS THAT PROMOTE INDOOR AIR AND WATER QUALITY, ASBESTOS REMEDIATION, LEAD PAINT REMOVAL, AND MOLD REMEDIATION**;
- (4) ~~water conservation devices not required by law~~; **RESILIENCY PROJECTS, WHICH MEANS A PROJECT INTENDED TO INCREASE THE CAPACITY OF A PROPERTY TO WITHSTAND NATURAL DISASTERS AND THE EFFECTS OF CLIMATE CHANGE, INCLUDING FLOOD MITIGATION, STORMWATER MANAGEMENT, A PROJECT TO INCREASE FIRE OR WIND RESISTANCE, A PROJECT TO INCREASE THE CAPACITY OF A NATURAL SYSTEM, AN INUNDATION ADAPTATION PROJECT, ALTERNATIVE VEHICLE CHARGING INFRASTRUCTURE, AND ENERGY STORAGE; AND**
- (5) ~~Any construction, renovation or retrofitting of commercial property to reduce energy consumption, including, high efficiency lighting and building systems, heating ventilation air conditioning (hvac) upgrades, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, building shell or envelope improvements, fenestration improvements, building energy management systems, and process equipment upgrades; and~~
- (6 5) Any other improvement **PROJECT** approved by the County or the Clean Energy Loan Program Administrator as qualifying ~~as an energy efficiency project or renew able energy~~

~~project.~~ **CONSISTENT WITH THE ACT.**

- (H) Qualifying Costs. A Clean Energy Loan may be used to pay for all costs incurred by a property owner in connection with the qualifying improvements, including, **BUT NOT LIMITED TO**, the cost of the energy audit; feasibility studies and reports; project management, design, installation, and construction of the qualifying ~~improvements~~ **PROJECTS**; commissioning; energy savings or performance guaranty or insurance; building accreditation; closing costs of the Clean Energy Loan; permitting fees; administrative fees; **AND** post-install evaluation, measurement ~~&~~ **AND** verification; ~~and~~; ~~building accreditation.~~

§152-31. Real Property Tax Surcharge.

- (A) Repayment of Loans. A property owner participating in the Clean Energy Loan Program shall repay the Clean Energy Loan through a surcharge on their real property tax bill. Upon receipt of written notice from the Clean Energy Loan Program Administrator of the execution of a Clean Energy Loan Financing Agreement, the County shall, within sixty (60) days from the date of the Clean Energy Loan Financing Agreement, add the surcharge to the tax property bill. The surcharge shall constitute a first lien on the property from the date it becomes payable until the unpaid surcharge and interest and penalties on the surcharge are paid in full, regardless of a change in ownership, whether voluntary or involuntary. A person or entity that acquires property subject to a surcharge assumes the obligation to pay such surcharge. The County may assign the surcharge lien to the Clean Energy Loan Program Administrator.
- (B) Calculation. The surcharge for a Clean Energy Loan shall include the Clean Energy Loan Obligation and any administrative costs incurred by the County which shall be the actual expenses incurred to administer the program.
- (C) Notice of Levy and Lien of Surcharge. Upon receiving written notice from the Clean Energy Loan Program Administrator of the execution of a Clean Energy Loan Financing Agreement, **THE PROPERTY OWNER SHALL EXECUTE AN AGREEMENT WITH THE COUNTY AND THE CLEAN ENERGY LENDER THAT WILL BE RECORDED IN THE LAND RECORDS OF KENT COUNTY.** Kent County shall promptly file the notice of levy and lien of surcharge in the Land Records, thereby providing notice to third parties. Such notice shall contain:
- (1) The date the Clean Energy Loan was made to the property owner and the property became subject to the surcharge;
 - (2) The term of the Clean Energy Loan and over which the surcharge will apply to the property;
 - (3) The Clean Energy Loan Obligation and estimated County administrative costs for the

first year;

- (4) The annual principal and interest amount for each year of the term of the Clean Energy Loan, including any partial year prorated amounts;
 - (5) Prepayment requirements and any prepayment premium that may apply to a prepayable Clean Energy Loan;
 - (6) Notice that the Clean Energy Loan Obligation and the County's administrative costs will be repaid through a surcharge included on the **PROPERTY** owner's real property tax bill due and payable on the same date as the real property tax bill;
 - (7) Notice that an unpaid Clean Energy Loan surcharge constitutes a first lien on the property that has priority over prior or subsequent liens in favor of private parties and that the surcharge will continue as a lien on the property from the date it becomes payable until the unpaid surcharge and interest and penalties on the surcharge are paid in full, regardless of a change in ownership of the property, whether voluntary or involuntary; and
 - (8) Notice that if payments of surcharges are not timely paid, the surcharge will be collectible as a tax lien through the tax sale process authorized under Tax-Property Article, Title 14, Subtitle 8 of the **ANNOTATED State Code OF MARYLAND** and in accordance with **THE CODE OF PUBLIC LOCAL LAWS OF KENT COUNTY, MARYLAND** §152-4 and that an overdue surcharge will be so collected, irrespective of whether real property taxes (or any other taxes, charges, or assessments) are due and owing.
- (D) Default. In the event of default on the Clean Energy Loan surcharge, the County shall be required to collect the lien pursuant to **THE CODE OF PUBLIC LOCAL LAWS OF KENT COUNTY, MARYLAND** §152-4, irrespective of whether property taxes (or any other taxes, charges, or assessments) are due and owing. The County shall not incur any liability to the Clean Energy Lender or others in the event of default.
- (E) Payment to Clean Energy Lender. The County shall have no ownership of the surcharges collected except for administrative costs provided under this subtitle. The Controller shall pay all surcharge payments in any calendar month to the applicable Clean Energy Lender or the Clean Energy Loan Program Administrator within **THIRTY (30)** days after the end of the month in which such amounts are collected. The County shall have no obligation to make payments to any Clean Energy Lender with respect to any Clean Energy Loan Obligation other than that portion of surcharge actually collected from a property owner for the repayment of a Clean Energy Loan. Payments received from a property owner shall be credited first to all County taxes, assessments, and charges.

§152-32. Financing.

(A) **CLEAN ENERGY LENDERS, TERMS.** Clean Energy Loans may be provided by any private lender and a Clean Energy Financing Agreement may contain any terms agreed to by the Clean Energy Lender and the property owner, as permitted by law, for the financing of Clean Energy Loans. The County may not finance or fund any loan under the program, shall serve only as a program sponsor to facilitate loan repayment by including the surcharge on the County real property tax bill for the property, and shall incur no liability for the loan. **THE CLEAN ENERGY LOAN MUST BE REPAID OVER A TERM NOT TO EXCEED THE USEFUL LIFE OF THE PROJECT AS DETERMINED BY THE CLEAN ENERGY LOAN PROGRAM.**

(B) **COUNTY ROLE. THE COUNTY'S ROLE IN THE CLEAN ENERGY LOAN PROGRAM IS LIMITED TO SPONSORING THE PROGRAM AND COLLECTING AND FORWARDING THE SURCHARGES IMPOSED UNDER THE PROGRAM. THE COUNTY MAY NOT PROVIDE CLEAN ENERGY LOANS OR OTHER FINANCING IN CONNECTION WITH THE CLEAN ENERGY LOAN PROGRAM.**

SECTION 2. BE IT FURTHER ENACTED, that Maryland Clean Energy Center and its designee are hereby authorized and directed to serve as the Clean Energy Loan Program Administrator under the terms of a separate agreement.

SECTION 3. BE IT FURTHER ENACTED, That this Act shall apply to any commercial property for which a Clean Energy Loan was financed on or after October 20, 2016.

SECTION 4. BE IT FURTHER ENACTED by the County Commissioners of Kent County that this

Act shall take effect on the 4th day of October, 2024.

Read Third Time August 20, 2024

PASSED this 20th day of August, 2024.

Failed of Passage _____

[SIGNATURES TO FOLLOW ON NEXT PAGE]

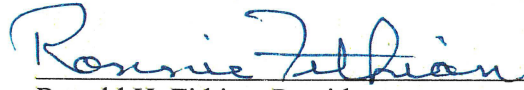
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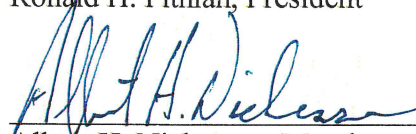

Sondra M. Blackiston, Clerk

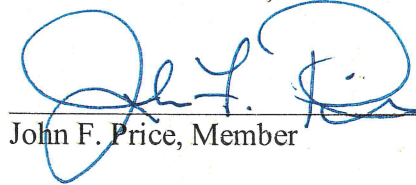
THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

(SEAL)




Ronald H. Fithian, President


Albert H. Nickerson, Member


John F. Price, Member

ORDERED a fair summary thereof or the entire bill shall be published in at least one newspaper of general circulation in the County, not less than three times at weekly intervals within a four-week period.