



Bill No. 23-09
Concerning: Clean Energy Loan Program for
Commercial Properties
Introduced: May 2, 2023
Revised: _____ Draft No. _____
Enacted: _____
Effective: _____
Expires: July 31, 2023
Frederick County Code, Chapter 1-8
Section(s) 451-456

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member Renee Knapp on behalf of County Executive Fitzwater

AN ACT to: Update the Commercial Clean Energy Loan Program.

Date Council Approved: _____ Date Transmitted to Executive: _____

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

Date returned by County Executive with no action: _____

By amending:
Frederick County Code, 1-8 451-456

Other: _____

Boldface

Underlining

[Single boldface brackets]

* * *

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

Bill No. 23-09

The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend Chapter § 1-8 of the County Code to update the Commercial Clean Energy Loan Program.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

Brad W. Young, President
County Council of Frederick County,
Maryland

Chapter 1-8: FINANCE AND TAXATION

ARTICLE XIV: COMMERCIAL CLEAN ENERGY LOAN PROGRAM.

§ 1-8-451 DEFINITIONS.

ACT. §§1-1101 *et seq.* of the Local Government Article.

[CLEAN ENERGY FINANCING AGREEMENT. An agreement between a commercial property owner and a clean energy lender providing for the terms and conditions of a clean energy loan.]

CLEAN ENERGY LENDER. A capital provider that provides loans to Property Owners in order to finance Qualifying Projects, approved by the Maryland Clean Energy Center, and such capital provider's successors, transferees, and assignees [private lender providing a clean energy loan].

CLEAN ENERGY LOAN. Any loan [, originating on or after the effective date of this Bill,] made by a private lender to a P[p]roperty O[o]wner under the C[c]lean E[e]nergy L[l]oan P[p]rogram.

CLEAN ENERGY LOAN FINANCING AGREEMENT. An agreement between a Property Owner and a Clean Energy Lender providing for the terms and conditions of a Clean Energy Loan.

CLEAN ENERGY LOAN OBLIGATION. All indebtedness and obligations of a P[p]roperty O[o]wner to a C[c]lean E[e]nergy L[l]ender under a C[c]lean E[e]nergy Loan F[f]inancing A[a]greement.

CLEAN ENERGY LOAN PROGRAM OR PACE PROGRAM. The clean energy loan program authorized by the Act, and established herein, the purpose of which is to provide loans to Property Owners to finance Qualifying Projects.

CLEAN ENERGY LOAN PROGRAM ADMINISTRATOR. Any person or entity selected by the County to manage the C[c]lean E[e]nergy L[l]oan P[p]rogram.

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1 **COMMERCIAL PROPERTY.** Any real property as defined in the Act, including residential
2 dwelling containing more than four single dwelling units [Has the meaning stated in the Local
3 Government Article, Section 1-1101, of the Annotated Code of Maryland].

4 **[DIVISION.** The Frederick County Division of Finance.

5 **PERSON.** Includes an individual, receiver, trustee, guardian, executor, administrator, fiduciary,
6 or representative of any kind, or any partnership, firm, association, public or private corporation, limited
7 liability company, nonprofit entity, or any other entity.

8 **PROGRAM.** The Clean Energy Loan Program established by this Bill.]

9 **MDPACE PROGRAM GUIDELINES.** The guidelines as defined by the Clean Energy Loan
10 Program Administrator, the purpose of which is to describe the requirements, rules, and procedures
11 applicable to the PACE Program.

12 **PROPERTY OWNER.** An owner of qualified C[c]ommercial P[p]roperty.

13 **QUALIFYING PROJECTS.** Projects as defined in §1-8-454 of this Code.

SURCHARGE. The assessment levied by the County on a Property Owner's property tax bill to
collect PACE Program loan payments owed to a Clean Energy Lender by the Property Owner and costs
of administering the PACE Program in accordance with the Act and as authorized by the County
legislation.

SURCHARGE LIEN. The lien automatically established upon the County's levy of the Surcharge
on the property tax bill.

14 **§ 1-8-452 PROGRAM ESTABLISHED; ADMINISTRATION.**

15 (A) *Established.* There is hereby established a Clean Energy Loan Program to finance and
16 refinance [energy efficiency projects and renewable energy projects on and for commercial properties]
17 Qualifying Projects in accordance with Section 1-1101, *et seq.*, of the Local Government Article of the
18 Annotated Code of Maryland.

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1 (B) *Rules and regulations.* The [Division] County may adopt rules and regulations to
2 administer the Clean Energy Loan Program consistent with this subtitle.

3 (C) *Program ~~A~~administrator.* The County Executive may enter into an agreement with a
4 private entity or State instrumentality to administer the Clean Energy Loan Program.

5 **§ 1-8-453 SCOPE AND ELIGIBILITY.**

6 (A) *Scope.* Property O[owners] are eligible to participate in the Clean Energy Loan Program
7 for non-accelerating loans [greater than \$15,000 for a term of up to 20 years]. The minimum loan amount
8 shall be equal to the minimum loan amount outlined in the MDPACE Program Guidelines as of the date
9 the loan is issued.

10 (B) *Eligibility.* In order to be eligible for a C[clean] E[energy] L[loan], the P[property]
11 O[owner] shall:

12 (1) Have a 100% ownership interest in the C[commercial] P[property] located in
13 Frederick County for which projects [improvements] are proposed;

14 [(2)] Obtain an energy audit approved under program guidelines demonstrating that
15 the savings projected to be obtained from the improvements over the life of the loan equal or exceed the
16 principal and aggregate interest to be paid over the term of the loan;]

17 [(3)] (2) Demonstrate that the most recent property taxes, assessments, and
18 charges on the property have been paid [tax bill has been paid for the property];

19 [(4)] (3) Provide a copy of written notice to all current holders of a mortgage or
20 deed of trust who have a priority recorded lien on the property and written proof of express consent to the
21 Clean Energy L[loan] as a priority lien by all current holders of a mortgage or deed of trust on the
22 property that is to be financed under the Clean Energy Loan Program; and

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1 [(5)] (4) Establish that the [property] owner of the Commercial Property is able to
2 repay the loan provided under the Clean Energy Loan Program, in a matter substantially similar to that
3 required for a mortgage loan under [based on criteria and methods set forth in Sections] §§12-127, 12-
4 311, 12-409.1, 12-925 and 12-1029 of the Commercial Law Article of the Annotated Code of Maryland
5 [and any criteria and methods required by the clean energy lender].

6 **§ 1-8-454 QUALIFYING IMPROVEMENTS AND COSTS.**

7 (A) *Qualifying Projects* [improvements]. The cost of the following types of qualifying
8 projects to existing buildings and structures, or new construction, on Commercial Property may be
9 financed through [following improvements, either new or replacement, to commercial properties qualify
10 as energy efficiency projects or renewable energy projects under] the Clean Energy Loan Program:

11 (1) Energy and water efficiency projects [Solar energy equipment];

12 (2) Renewable energy projects, including but not limited to solar energy
13 equipment, geothermal energy devices, and wind energy systems [Geothermal energy devices];

14 (3) Environmental remediation projects, which means a project intended to
15 remove environmental or health hazards, and including projects that promote indoor air and water
16 quality, asbestos remediation, lead paint removal, and mold remediation [Wind energy systems];

17 (4) Resiliency projects, which means a project intended to increase the capacity
18 of a property to withstand natural disasters and the effects of climate change including flood
19 mitigation, stormwater management, a project to increase fire or wind resistance, a project to
20 increase the capacity of a natural system, an inundation adaptation project, alternative vehicle
21 charging infrastructure, and energy storage [Water conservation devices not required by law]; and

22 (5) [Any construction, renovation, or retrofitting of commercial property to reduce
23 energy consumption, including, high efficiency lighting and building systems, heating ventilation air

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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)] Any other project [improvement] approved by the County or the Clean Energy Loan Program Administrator as qualifying consistent with the Act [as an energy efficiency project or renewable energy project].

(B) *Qualifying costs.* A C[c]lean E[e]nergy L[l]oan may be used to pay for all costs incurred by a P[p]roperty O[o]wner [for the following costs] in connection with the Qualifying Projects, including but not limited to [qualifying improvements]:

(1) The cost of the energy audit;

(2) Feasibility studies and reports;

(3) Project management, [The] design, installation, and construction of the Qualifying Projects [qualifying improvements];

(4) Commissioning;

(5) Energy savings or performance guaranty or insurance; [and]

(6) Closing costs of the Clean Energy L[l]oan[.];

(7) Permitting fees;

(8) Administrative fees;

(9) Post-install Evaluation, Management & Verification; and

(10) Building Accreditation.

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1 § 1-8-455 REAL PROPERTY TAX SURCHARGE.

2 (A) *Repayment of loans.* A P[p]roperty O[o]wner participating in the Clean Energy Loan
3 Program shall repay the Clean Energy L[l]oan through a S[s]urcharge on their [owner's] real property tax
4 bill. Upon receipt of written notice from the Clean Energy Loan Program A[a]dministrator of the
5 execution of a C[c]lean E[e]nergy L[l]oan F[f]inancing A[a]greement, the County shall add the
6 S[s]urcharge to the tax property bill on July 1 of the year indicated by the payment schedule of the Clean
7 Energy Loan Financing Agreement [immediately following the execution of the agreement]. The
8 S[s]urcharge shall constitute a first lien on the property from the date it becomes payable until the unpaid
9 S[s]urcharge and interest and penalties on the S[s]urcharge are paid in full, regardless of a change in
10 ownership, whether voluntary or involuntary. A person or entity that acquires property subject to a [Clean
11 Energy Loan Program] S[s]urcharge assumes the obligation to pay the S[s]urcharge.

12 (B) *Calculation.* The S[s]urcharge for a C[c]lean E[e]nergy L[l]oan shall include the
13 C[c]lean E[e]nergy L[l]oan O[o]bligation and any administrative costs incurred by the County. The
14 included administrative costs shall be the actual expenses incurred to administer the Clean Energy Loan
15 P[p]rogram.

16 (C) *Statement of Levy and Lien of Surcharge Agreement.* Upon receiving written notice
17 from the Clean Energy Loan Program Administrator of the execution of a Clean Energy Loan Financing
18 Agreement, t[t]he P[p]roperty O[o]wner shall [must] execute an agreement with the County and the
19 C[c]lean E[e]nergy L[l]ender that will be recorded in the land records of Frederick County, at the
20 expense of the Property O[o]wner, and which shall include:

21 (1) The date the C[c]lean E[e]nergy L[l]oan was made to the P[p]roperty O[o]wner
22 and the property became subject to the S[s]urcharge;

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1 (2) The term of the C[c]lean E[e]nergy L[l]oan and the S[s]urcharge, including how
2 long it will apply to the property;

3 (3) The amount of the C[c]lean E[e]nergy L[l]oan O[o]bligation and estimated
4 C[c]ounty administrative costs for the first year;

5 (4) The annual principal and interest amount for each year of the term of the Clean
6 Energy L[l]oan, including any partial year prorated amounts;

7 (5) The prepayment requirements and any prepayment premium that may apply, if
8 the loan is a pre-payable C[c]lean E[e]nergy L[l]oan;

9 (6) Agreement by the P[p]roperty O[o]wner to repay all C[c]lean E[e]nergy L[l]oan
10 O[o]bligations and the C[c]ounty's administrative costs through the [a s]Surcharge included on the
11 owner's real property tax bill due and payable on the same date as the real property tax bill;

12 (7) Acknowledgement by the P[p]roperty O[o]wner that an unpaid [clean energy
13 loan] S[s]urcharge constitutes a first lien on the property that has priority over prior or subsequent liens in
14 favor of private parties, and that the S[s]urcharge will continue as a lien on the property from the date it
15 becomes payable until the unpaid S[s]urcharge and interest and penalties on the S[s]urcharge are paid in
16 full, regardless of a change in ownership of the property, whether voluntary or involuntary;

17 (8) Acknowledgement by the P[p]roperty O[o]wner and the Clean Energy L[l]ender
18 that the County has no liability for the C[c]lean E[e]nergy L[l]oan O[o]bligation or any costs associated
19 with the collection of amounts due under the C[c]lean E[e]nergy Loan E[f]inancing A[a]greement; and

20 (9) Acknowledgement by the P[p]roperty O[o]wner that an overdue S[s]urcharge
21 shall be collected as a tax lien pursuant to Title 14, Subtitle 8 of the Tax-Property Article of the
22 Annotated Code of Maryland and Chapter 2-7: Finance and Taxation, Article V: Tax Sales of this Code,
23 and that an overdue Surcharge will be so collected, irrespective of whether real property taxes or any

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1 other taxes, charges, or assessments are due and owing.

2 (D) *Default.* If a P[p]roperty O[o]wner defaults on the [clean energy loan] S[s]urcharge, the
3 lien will be collected pursuant to Title 14, Subtitle 8 of the Tax-Property Article of the Annotated Code of
4 Maryland and Chapter 2-7 of this Code, irrespective of whether property taxes or any other taxes, charges
5 or assessments are due and owing. The County shall not incur any liability to the Clean Energy Lender or
6 others in the event of default.

7 (E) *Credit of payments.* Payments received from a P[p]roperty O[o]wner and from the sale
8 of a property where a C[c]lean E[e]nergy L[l]oan is in default shall be credited first to all County and
9 other political subdivision taxes, assessments, and charges before being credited towards outstanding
10 C[c]lean E[e]nergy L[l]oan S[s]urcharges and balances.

11 (F) *County to forward surcharges collected.* The County shall have no ownership of the
12 Surcharges collected, except for administrative costs provided under this subtitle. The County shall
13 forward collected S[s]urcharge[s] payments in any calendar month to the C[c]lean E[e]nergy L[l]ender or
14 the Clean Energy Loan Program A[a]dministrator within thirty (30) days after the end of the month in
15 which such amounts are collected [60 days of receipt]. The County shall have no obligation to make
16 payments to any Clean Energy Lender with respect to any Clean Energy Loan Obligation other than that
17 portion of Surcharge actually collected from a Property Owner for the repayment of a Clean Energy Loan.

18 (G) *County liability.* Except for the obligation to forward S[s]urcharges under Subsection (F)
19 of this Section, the County does not incur any liability by participating in the Clean Energy Loan Program
20 and the County is not liable to the C[c]lean E[e]nergy L[l]ender, the Clean Energy Loan Program
21 A[a]dministrator, the P[p]roperty O[o]wner or to others in the event of the P[p]roperty O[o]wner's
22 default.

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1 § 1-8-456 FINANCING.

2 (A) *Private lenders; terms.* Any private lender may provide a C[c]lean E[e]nergy L[l]oan,
3 and the C[c]lean E[e]nergy Loan F[f]inancing A[a]greement that evidences the loan may include any
4 terms and conditions permitted by law. The Clean Energy Loan must be repaid over a term not to exceed
5 the useful life of the project as determined by the Clean Energy Loan Program.

6 (B) *County role.* The County's role in the Clean Energy Loan Program is limited to
7 sponsoring the Clean Energy Loan Program and collecting and forwarding the S[s]urcharges imposed
8 under the Clean Energy Loan Program. The County may not provide C[c]lean E[e]nergy L[l]oans or
9 other financing in connection with the Clean Energy Loan Program.

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