

ENROLLED

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

LEGISLATIVE SESSION, 2018

LEGISLATIVE BILL 2018-04

Introduced: April 3, 2018

By: The Council President

AN ACT to add Chapter 30, titled "Clean Energy Loan Program," to the Wicomico County Code to establish 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 agreement and certain notice; providing for the collection of loan payments; establishing default procedures; providing for financing of a loan under the Program; defining certain terms; and generally relating to the Clean Energy Loan Program.

WHEREAS, the Wicomico County Council finds it necessary and appropriate to add Chapter 30 to the Wicomico County Code to establish a Clean Energy Loan Program for commercial property owners.

SECTION I; BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION, that Chapter 30, titled "Clean Energy Loan Program," be enacted as follows:

CHAPTER 30

CLEAN ENERGY LOAN PROGRAM

§ 30-1. DEFINITIONS.

- (A) *IN GENERAL.* IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.
- (B) *CLEAN ENERGY FINANCING AGREEMENT.* "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.
- (C) *CLEAN ENERGY LENDER.* "CLEAN ENERGY LENDER" MEANS A PRIVATE LENDER PROVIDING A CLEAN ENERGY LOAN UNDER THE PROGRAM.
- (D) *CLEAN ENERGY LOAN.* "CLEAN ENERGY LOAN" MEANS ANY LOAN MADE BY A PRIVATE LENDER TO A PROPERTY OWNER UNDER THE PROGRAM.

- (E) *CLEAN ENERGY LOAN OBLIGATION*. "CLEAN ENERGY LOAN OBLIGATION" MEANS ALL INDEBTEDNESS AND OBLIGATIONS OF A PROPERTY OWNER TO A CLEAN ENERGY LENDER UNDER A CLEAN ENERGY FINANCING AGREEMENT.
- (F) *CERTIFIED GENERAL REAL ESTATE APPRAISER*. "CERTIFIED GENERAL REAL ESTATE APPRAISER" MEANS AN INDIVIDUAL WHO IS CERTIFIED AS A REAL ESTATE APPRAISER UNDER TITLE 16 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE OF THE ANNOTATED CODE OF MARYLAND.
- (G) *COMMERCIAL PROPERTY*. "COMMERCIAL PROPERTY" HAS THE MEANING STATED IN § 1-1101 OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.
- (H) *PROGRAM*. "PROGRAM" MEANS THE CLEAN ENERGY LOAN PROGRAM.
- (I) *PROGRAM ADMINISTRATOR*. "PROGRAM ADMINISTRATOR" MEANS ANY PERSON OR ENTITY CHOSEN BY THE COUNTY TO MANAGE THE PROGRAM.
- (J) *PROPERTY OWNER*. "PROPERTY OWNER" MEANS AN OWNER OF A COMMERCIAL PROPERTY.

§ 30-2. ESTABLISHED.

IN ACCORDANCE WITH THE STATE ENABLING LEGISLATION CODIFIED AS TITLE 1, SUBTITLE 11 OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, THERE IS A CLEAN ENERGY LOAN PROGRAM TO FINANCE CERTAIN ENERGY EFFICIENCY PROJECTS AND RENEWABLE ENERGY PROJECTS.

§ 30-3. PARTICIPATION; CASH VALUE OF LOAN.

- (A) *PARTICIPATION*. COMMERCIAL PROPERTY OWNERS MAY PARTICIPATE IN THE PROGRAM FOR NONACCELERATING LOANS, FOR A TERM OF UP TO 20 YEARS.
- (B) *VALUE*.
 - (1) THE LOAN AMOUNT UNDER THIS PROGRAM:
 - (I) SHALL BE AT LEAST \$5,000 AND NOT MORE THAN 20% OF THE:
 - 1. FULL CASH VALUE OF THE PROPERTY; OR
 - 2. APPRAISED VALUE OF THE PROPERTY; AND
 - (II) TOGETHER WITH THE OUTSTANDING BALANCE OF THE MORTGAGE OR DEED OF TRUST MAY NOT BE MORE THAN 90% OF THE FULL CASH VALUE OR THE APPRAISED VALUE OF THE PROPERTY.
 - (2) THE FULL CASH VALUE IS DETERMINED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.

- (3) THE APPRAISED VALUE MUST BE CERTIFIED BY A CERTIFIED REAL ESTATE APPRAISER NOT MORE 12 MONTHS BEFORE THE DATE OF THE LOAN APPLICATION.
- (C) *ELIGIBILITY*. IN ORDER TO BE ELIGIBLE FOR A LOAN, THE PROPERTY OWNER SHALL:
- (1) HAVE A 100% OWNERSHIP INTEREST IN THE PROPERTY LOCATED IN WICOMICO COUNTY FOR WHICH THE IMPROVEMENTS ARE PROPOSED, WHICH SHALL BE IDENTIFIED IN THE OWNER'S APPLICATION BY LEGAL DESCRIPTION AND THE CURRENT DEED REFERENCE(S);
 - (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 FIRST PRIORITY LIEN BY ALL CURRENT HOLDERS OF A MORTGAGE OR DEED OF TRUST ON THE PROPERTY; 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 CODE OF MARYLAND.

§ 30-4. QUALIFYING IMPROVEMENTS; COSTS INCURRED IN CONNECTION WITH QUALIFYING IMPROVEMENTS.

- (A) *QUALIFYING IMPROVEMENTS*. THE FOLLOWING IMPROVEMENTS, EITHER NEW OR REPLACEMENT, TO A NEW OR EXISTING COMMERCIAL PROPERTY, QUALIFY AS ENERGY EFFICIENCY OR RENEWABLE ENERGY PROJECTS UNDER THE CLEAN ENERGY LOAN PROGRAM:
- (1) SOLAR ENERGY EQUIPMENT;
 - (2) GEOTHERMAL ENERGY DEVICES;
 - (3) WIND ENERGY SYSTEMS;
 - (4) WATER CONSERVATION DEVICES NOT REQUIRED BY LAW;
 - (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) ANY OTHER IMPROVEMENT APPROVED BY THE COUNTY OR THE CLEAN ENERGY LOAN PROGRAM ADMINISTRATOR AS QUALIFYING AS AN ENERGY EFFICIENCY PROJECT OR RENEWABLE ENERGY PROJECT.
 - (7) RENEWABLE ENERGY SOURCE DOES NOT INCLUDE PETROLEUM, NUCLEAR, NATURAL GAS, OR COAL.
- (B) *COSTS INCURRED.* A CLEAN ENERGY LOAN MAY BE USED TO PAY FOR ALL COSTS INCURRED BY A PROPERTY OWNER IN CONNECTION WITH THE QUALIFYING IMPROVEMENTS, INCLUDING:
- (1) THE COST OF AN ENERGY AUDIT;
 - (2) FEASIBILITY STUDIES AND REPORTS;
 - (3) PROJECT MANAGEMENT, DESIGN, INSTALLATION, AND CONSTRUCTION OF THE QUALIFYING IMPROVEMENTS;
 - (4) COMMISSIONING;
 - (5) ENERGY SAVINGS OR PERFORMANCE GUARANTY OR INSURANCE;
 - (6) BUILDING ACCREDITATION;
 - (7) CLOSING COSTS OF THE CLEAN ENERGY LOAN;
 - (8) PERMITTING FEES;
 - (9) ADMINISTRATIVE FEES;
 - (10) POST-INSTALL EVALUATION, MEASUREMENT AND VERIFICATION; AND
 - (11) BUILDING ACCREDITATION.

§ 30-5. SURCHARGE.

(A) *REPAYMENT OF CLEAN ENERGY LOAN THROUGH SURCHARGE.*

- (1) A PROPERTY OWNER PARTICIPATING IN THE CLEAN ENERGY LOAN PROGRAM SHALL REPAY THE CLEAN ENERGY LOAN THROUGH A SURCHARGE ON THE PROPERTY OWNER'S REAL PROPERTY TAX BILL.
- (2) ON 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 60 DAYS AFTER THE DATE OF THE CLEAN ENERGY LOAN FINANCING AGREEMENT, ADD THE SURCHARGE TO THE PROPERTY TAX BILL.
- (3) 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, AND THE PROVISIONS OF TITLE 14, SUBTITLE 8 OF THE TAX

– PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND THAT APPLY TO A TAX LIEN SHALL ALSO APPLY TO A LIEN CREATED UNDER THIS SUBSECTION.

- (4) A PERSON OR ENTITY THAT ACQUIRES PROPERTY SUBJECT TO A SURCHARGE ASSUMES THE OBLIGATION TO PAY THE SURCHARGE.
 - (5) THE COUNTY MAY ASSIGN THE SURCHARGE LIEN TO THE CLEAN ENERGY LOAN PROGRAM ADMINISTRATOR.
- (B) *INCLUDED COSTS IN SURCHARGE.* 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) *RECORDED AGREEMENT AND INFORMATION REQUIRED.* THE PROPERTY OWNER AND EVERY OTHER PERSON OR ENTITY HOLDING ANY SHARE OR PART OF THE RECORD TITLE TO THE PROPERTY AT THE TIME WHEN THE AGREEMENT IS RECORDED IN THE LAND RECORDS SHALL EXECUTE AN AGREEMENT WITH THE COUNTY AND THE CLEAN ENERGY LENDER THAT WILL BE RECORDED IN LAND RECORDS OF THE COUNTY, AT THE EXPENSE OF THE PROPERTY OWNER, WHICH SHALL IDENTIFY THE PROPERTY BY LEGAL DESCRIPTION AND ITS CURRENT DEED REFERENCE(S) AND INCLUDE:
- (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 AMOUNT OF 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) THE PREPAYMENT REQUIREMENTS AND ANY PREPAYMENT PREMIUM THAT MAY APPLY TO A PREPAYABLE CLEAN ENERGY LOAN;
 - (6) NOTICE THAT THE CLEAN ENERGY LOAN OBLIGATIONS AND THE COUNTY'S ADMINISTRATIVE COSTS WILL BE REPAID THROUGH A SURCHARGE INCLUDED ON THE OWNER'S REAL PROPERTY TAX BILL THAT SHALL BE 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 CODE OF MARYLAND IRRESPECTIVE OF WHETHER REAL PROPERTY TAXES (OR ANY OTHER TAXES, CHARGES, OR ASSESSMENTS) ARE DUE AND OWING.

(D) *EVENT OF DEFAULT OF SURCHARGE.*

- (1) IN THE EVENT OF DEFAULT IN PAYMENT OF THE CLEAN ENERGY LOAN SURCHARGE, THE COUNTY SHALL COLLECT THE UNPAID SURCHARGE BY ENFORCING THE LIEN IRRESPECTIVE OF WHETHER PROPERTY TAXES (OR ANY OTHER TAXES, CHARGES, OR ASSESSMENTS) ARE DUE AND OWNING.
- (2) THE COUNTY MAY NOT INCUR ANY LIABILITY TO THE CLEAN ENERGY LENDER OR OTHERS IN THE EVENT OF DEFAULT.

(E) *COUNTY ROLE.*

- (1) THE COUNTY SHALL HAVE NO OWNERSHIP OF THE SURCHARGES COLLECTED EXCEPT FOR ITS ADMINISTRATIVE COSTS PROVIDED UNDER THIS TITLE.
- (2) EXCEPT FOR ITS ADMINISTRATIVE COSTS THE COUNTY SHALL PAY ALL SURCHARGE PAYMENTS TO THE APPLICABLE CLEAN ENERGY LENDER OR THE CLEAN ENERGY LOAN PROGRAM ADMINISTRATOR WITHIN 30 DAYS AFTER THE END OF THE MONTH IN WHICH SUCH AMOUNTS ARE COLLECTED.
- (3) 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.
- (4) PAYMENTS RECEIVED FROM A PROPERTY OWNER SHALL BE CREDITED FIRST TO UNPAID COUNTY TAXES, ASSESSMENTS, ATTORNEY'S FEE OR OTHER ADMINISTRATIVE COSTS AND CHARGES, INCLUDING INTEREST OR LATE FEES, THEREON.

§ 30-6. PROVISION OF CLEAN ENERGY LOANS; DUTY AND RESPONSIBILITY OF THE COUNTY; PROHIBITED ACTS.

(A) *PROVISION OF CLEAN ENERGY LOAN.*

- (1) ANY PRIVATE LENDER MAY PROVIDE NONACCELERATING CLEAN ENERGY LOANS UNDER THIS PROGRAM.

(2) 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.

(B) *DUTY AND RESPONSIBILITY OF THE COUNTY.* THE COUNTY:

(1) SHALL SERVE ONLY AS A PROGRAM SPONSOR PURSUANT TO THE STATE ENABLING LEGISLATION IDENTIFIED ABOVE TO FACILITATE LOAN REPAYMENT BY INCLUDING THE SURCHARGE ON THE COUNTY REAL PROPERTY TAX BILL FOR THE PROPERTY AND SHALL HAVE NO DUTY OR RESPONSIBILITY FOR SUCH REPAYMENT, USAGE OF THE LOAN FUNDS OR COMPLIANCE OF A LOAN WITH THAT LEGISLATION OR THIS CHAPTER; AND

(2) MAY NOT:

(I) FINANCE OR FUND ANY LOAN UNDER THE PROGRAM; AND

(II) INCUR ANY LIABILITY FOR A LOAN AS GUARANTOR OR OTHERWISE.

§ 30-7. ADMINISTRATION OF PROGRAM.

(A) *ADOPTION OF REGULATIONS.* THE DIRECTOR OF FINANCE MAY ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS CHAPTER.

(B) *AGREEMENT WITH PRIVATE ENTITY FOR ADMINISTRATION ALLOWED.* THE COUNTY EXECUTIVE MAY ENTER INTO AN AGREEMENT WITH A PRIVATE ENTITY TO ADMINISTER THE PROGRAM. THE AGREEMENT IS SUBJECT TO THE APPROVAL OF THE COUNTY COUNCIL.

(C) *ANNUAL REPORT.* 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.

SECTION II: BE IT FURTHER ENACTED THAT this Legislative bill will be known as Legislative Bill No. 2018-04 of Wicomico County, Maryland and will take effect 60 days after its final passage, unless a timely petition for referendum is filed. If a timely petition is filed, then the bill will not take effect until 30 days after the approval of this bill by a majority of the qualified voters of the County voting in the referendum.

Certified correct as passed and adopted by the County Council of Wicomico County, Maryland on May 1, 2018.

COUNTY COUNCIL
OF
WICOMICO COUNTY, MARYLAND

2018 Legislative Session

Legislative Day No. 07

LEGISLATIVE BILL NO. 2018-04

INTRODUCED BY: President of the Council

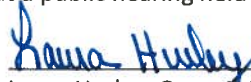
AN ACT to add Chapter 30, titled "Clean Energy Loan Program," to the Wicomico County Code to establish a Clean Energy Loan Program for commercial property owners; establishing the scope of and eligibility for the Clean Energy loan Program; providing for qualifying criteria; establishing a calculation of the clean energy loan surcharge; providing for a recorded agreement and certain notice; providing for the collection of loan payments; establishing default procedures; providing for financing of a loan under the Program; defining certain terms; and generally relating to the Clean Energy Loan Program.

Introduced and read first time on April 3, 2018. Ordered posted and public hearing scheduled for May 1, 2018 at 6:00 p.m.



Laura Hurley, Council Administrator

PUBLIC HEARING: Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, the Bill was read for a second time at a public hearing held on May 1, 2018 and concluded on May 1, 2018.



Laura Hurley, Council Administrator

CERTIFICATION: The undersigned hereby certifies that this Bill was Approved and Adopted by the County Council of Wicomico County, Maryland, on the 1st day of May, 2018.



Laura Hurley, Council Administrator

Presented to the County Executive for approval this 2nd day of May, 2018 at 4:00 p.m. (5 days §411)



Laura Hurley, Council Administrator

BY THE EXECUTIVE:



County Executive

APPROVED
Date: 5/4/18
(21 days §411)

VETOED
Date: _____

BY THE COUNCIL:

Option One: This Bill, having been approved by the County Executive and returned to the Council, becomes law on May 4, 2018 and effective on: July 3, 2018.
(60 days §311)

Option Two: This Bill, having received neither the approval nor the disapproval of the Executive within 21 days of its presentation, stands enacted on _____ and becomes effective on _____.
(60 days §311)

ENROLLMENT: Legislative Bill No. 2018-04 is herewith submitted to the County Council of Wicomico County for enrollment as being the text as finally passed.



Laura Hurley, Council Administrator
Date: _____

WICOMICO COUNTY, MARYLAND

 (SEAL)

By: John T. Cannon, President

 (SEAL)

By: Laura Hurley, Secretary

I certify that copies of this Bill are available to the public, the press, and other news media at the time of its introduction.

 (SEAL)

By: Laura Hurley, Secretary

Explanation:

“Strike-out” indicates matters deleted from existing law.

“All Capital” indicates matters added to existing law.