

COUNTY COUNCIL
OF
DORCHESTER COUNTY, MARYLAND

2019 Legislative Session,
Legislative Day No. 7

Introduced By: County Council

BILL NO. 2019-6

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND PURSUANT TO SECTION 1-1101, ET SEQ., OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND TO ADD NEW ARTICLE XX, ENTITLED "CLEAN ENERGY LOAN SURCHARGE – CLEAN ENERGY LOAN PROGRAM", TO CHAPTER 144, ENTITLED "TAXATION" OF THE DORCHESTER COUNTY CODE 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 OF A LOAN 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.

Introduced, read first time, ordered posted on the official bulletin board of County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, October 1, 2019, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:20 p.m.

By order: *William V. Nichols*

William V. Nichols
President of the County Council
of Dorchester County, Maryland

Aug.19
CleanEnergyLoan.Pub/mlh

**COUNTY COUNCIL
OF
DORCHESTER COUNTY, MARYLAND**

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WHEREAS, Dorchester County, Maryland wishes to establish a Clean Energy Loan Program to encourage the finance of energy efficiency projects and renewable energy projects, as set forth in Local Government Article, Section 1-1101, et seq., of the State Code; and

WHEREAS, Local Government Article, Section 1-1102, of the State Code so authorizes counties and municipalities to enact such an act to establish a Clean Energy Loan Program.

SECTION ONE: Acting under Section 1-1101, et seq., of the Local Government Article of the Annotated Code of Maryland, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland, to add new Article XX, entitled "Clean Energy Loan Surcharge – Clean Energy Loan Program" to Chapter 144, entitled "Taxation" of the Dorchester County Code, to read as follows:

Chapter 144

TAXATION

ARTICLE XX

**Clean Energy Loan Surcharge
Clean Energy Loan Program**

§ 144-59. Clean Energy Loan Program.

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

(1) "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.

(2) "Clean Energy Lender" means a private lender providing a Clean Energy Loan.

(3) "Clean Energy Loan" means any loan made by a private lender to a property owner under the Clean Energy Loan Program.

(4) "Clean Energy Loan Program Administrator" means any person or entity selected by the County to manage 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) "Commercial Property" has the meaning stated in the Local Government Article, Section 1-1101, et. seq., of the State Code.

(7) "Property Owner" means an owner of commercial property as defined in this Article.

(8) "Surcharge" means the repayment obligation of a Clean Energy Loan, including principal, interest, any applicable fees and administrative costs, collected from a property owner through the County's property tax billing system in accordance with Section 1-1101, et seq., of the Local Government Article and as authorized by this Article.

(9) "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 as provided in the Local Government Article, Section 1-1101, et seq., of the State Code.

(c) **Rules and Regulations.** The County may adopt rules and regulations to administer the Clean Energy Loan Program consistent with this Article.

(d) **Program Administrator.** The County Manager, with the approval of the County Council, may enter into an agreement with a private entity 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 Dorchester County for which improvements are 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 a list of all other holders of liens on the property. All holders of a mortgage or deed of trust on the property and all other lienholders shall execute and deliver a recorded subordination agreement in which all lienholders on the property subordinate the priority of its lien on the property in favor of the Surcharge and Surcharge Lien of the County.

(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 Sections 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the State Code.

(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;

(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.

(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 the cost of the energy audit; feasibility studies and reports; project management, design, installation, and construction of the qualifying improvements; commissioning; energy savings or performance guaranty or insurance; building accreditation; closing costs of the Clean Energy Loan; permitting fees; administrative fees; post-install Evaluation, Measurement & Verification; and, building accreditation.

§ 144-60. 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 tax 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 a notice with the County and the Clean Energy Lender that will be recorded in the Land Records of Dorchester County, at the expense of the property owner, and which shall 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 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 Obligations and the County's administrative costs will be repaid through a Surcharge included on the 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 State Code 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 Tax Property Article, Title 14, Subtitle 8, 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) **Credit of Payments.** Payments received from a property owner shall be credited first to all county taxes, assessments, and charges.

(f) **Payment to Clean Energy Lender.** The County shall have no ownership of the Surcharges collected except for administrative costs provided under this Article. The County shall pay all surcharge payments in any calendar month 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. 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.

§ 144-61. Financing.

(a) **Private 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.

(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 this program.

SECTION TWO. And be it further ENACTED, that Maryland Clean Energy Center and its designee is hereby authorized and directed to serve as the Clean Energy Loan Program Administrator under the terms of separate agreement.

SECTION THREE. And be it further ENACTED, that this Act shall apply to any commercial property for which a Clean Energy Loan was financed on or after _____, 2019.

SECTION FOUR: Be it further ENACTED and ORDAINED, by the County Council of Dorchester County, Maryland that General Code Publishers is directed to codify the new Article XX, entitled "Clean Energy Loan Surcharge – Clean Energy Loan Program", to Chapter 144, entitled "Taxation" in the Dorchester County Code accordingly.

SECTION FIVE: Be it further ENACTED, pursuant to Section 308 of the Charter of Dorchester County, Maryland that promptly after enactment of this Act, the County Manager shall cause a fair summary of this Act to be published at least once in a newspaper of general circulation in Dorchester County, Maryland.

SECOND SIX: Be it further ENACTED and ORDAINED, by the County Council of Dorchester County, Maryland that this Bill shall be known as Bill No. 2019-6 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage, and shall expire on June 30, 2023. This Act shall apply to the real property tax billings as of July 1, 2019.

PASSED this _____ day of _____, 2019.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND

BY: _____
Keith Adkins
County Manager

BY: _____
William V. Nichols
President

APPROVED this _____ day of _____, 2019.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND

BY: _____
Keith Adkins
County Manager

BY: _____
William V. Nichols
President

Newcomb –
Nagel –
Nichols –
Pfeffer –
Travers –