THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

July 19, 2016
Legislative Session Day

Legislative Session Day
July 19, 2016

CODE HOME RULE
BILL NO. 3-2016

INTRODUCED BY: William W. Pickrum, President of the Board of County Commissioners for Kent County, Maryland.

AN ACT to amend Chapter 152 Taxation to add Article VII Clean Energy Loan Program, §§ 152-30, 152-31, and 152-32 to 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 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 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

William W. Pickrum, President

INTRODUCED, read first time, July 19, 2016, ordered posted and public hearing scheduled on August 9, 2016, 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

RECEIVED
CLERK, CIRCUIT COURT
2016 SEP -8 P 3: 3
KENT COUNTY

PUBLIC HEARING

HAVING been posted and notice of time and place of hearing and copies having been made available to the public and the press, a public hearing was held on August 9, 2016. Reported favorably ~~[with]~~ [without] amendments; read second time and ordered to be considered on September 6, 2016, a legislative session day.

CAPITALS & BOLD INDICATES MATTER ADDED TO EXISTING LAW.
~~Strike through~~ indicates matter deleted from existing law.

A BILL ENTITLED CHR 3-2016 CLEAN ENERGY LOAN PROGRAM

SECTION 1

NOW THEREFORE BE IT ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND that Chapter 152 is hereby amended to add Article VII, §§ 152-30, 152-31, and 152-32 as follows:

ARTICLE VII
CLEAN ENERGY LOAN PROGRAM

§152-30. CLEAN ENERGY LOAN PROGRAM.

(A) DEFINITIONS. IN THIS SUBTITLE, 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, §§ 1-1101 ET. SEQ., OF THE STATE CODE.

(7) "PROPERTY OWNER" MEANS AN OWNER OF COMMERCIAL PROPERTY AS DEFINED IN THIS SUBSECTION.

(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

CAPITALS & BOLD INDICATES MATTER ADDED TO EXISTING LAW.
~~Strike-through~~ indicates matter deleted from existing law.

PER PARCEL, AS PROVIDED IN THE LOCAL GOVERNMENT ARTICLE, §§1-1101 ET SEQ., OF THE STATE CODE.

(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 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 ARE BEING MADE;

(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; 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 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;

CAPITALS & BOLD INDICATES MATTER ADDED TO EXISTING LAW.
~~Strike-through~~ indicates matter deleted from existing law.

(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.

§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.

CAPITALS & BOLD INDICATES MATTER ADDED TO EXISTING LAW.
~~Strike-through~~ indicates matter deleted from existing law.

(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, 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 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

CAPITALS & BOLD INDICATES MATTER ADDED TO EXISTING LAW.
~~Strike-through~~ indicates matter deleted from existing law.

THE TAX SALE PROCESS AUTHORIZED UNDER TAX-PROPERTY ARTICLE, TITLE 14, SUBTITLE 8 OF THE STATE CODE AND IN ACCORDANCE WITH §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 §152-4, IRRESPECTIVE OF WHETHER PROPERTY TAXES (OR ANY OTHER TAXES, CHARGES, OR ASSESSMENTS) ARE DUE AND OWNING. 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 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. 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.

SECTION 2. 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 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. AND BE IT FURTHER ENACTED by the County Commissioners of Kent County that this Act shall take effect on the 20th day of October, 2016.

Read Third Time September 6, 2016

PASSED this 6th day of September, 2016

Failed of Passage _____

By Order of:

Sondra M. Blackiston

Sondra M. Blackiston, Clerk

THE COUNTY COMMISSIONERS OF KENT COUNTY

(SEAL)

COUNTY COMMISSIONERS OF KENT CO. SEAL ADOPTED MAY 18, 1880 MARYLAND

William W. Pickrum, President

Ronald H. Fithian, Member

William A. Short, Member

ORDERED a fair summary thereof of 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.

CAPITALS & BOLD INDICATES MATTER ADDED TO EXISTING LAW.

~~Strike through~~ indicates matter deleted from existing law.