

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2023 Legislative Session

Legislative Day No. 1

Bill No. 3 -2023

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending the Clean Energy Loan Program by defining certain terms; amending the scope of eligibility to receive a Clean Energy Loan; adding improvements that are eligible under the Program; adding qualifying costs that are eligible for reimbursement under the Program; clarifying default provisions; amending when surcharges will be collected; setting forth the term by which the Clean Energy Loan shall be repaid; setting forth the Clean Energy Loan Program Administrator; making certain technical corrections; and generally relating to the Clean Energy Loan Program.

Introduced and read first time _____, 2023. Ordered posted and hearing scheduled.

By order _____
Michelle Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2023.

By order _____
Michelle Harrod, Administrator

This Bill was read the third time on _____, 2023 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2023 at ___ a.m./p.m.

By order _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2023

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the
2 Howard County Code is amended as follows:

3 By amending:

4 Title 20. Taxes, charges and fees.

5 Subtitle 12. Clean Energy Loan Program.

6
7 **Title 20. Taxes, charges and fees.**

8 **Subtitle 12. Clean Energy Loan Program**

9
10 **Section 20.1200. Definitions.**

11 In this subtitle, the following words have the meanings indicated:

12 (a) *Clean Energy Financing Agreement* means an agreement between a property owner
13 and a Clean Energy Lender providing for the terms and conditions of a Clean
14 Energy Loan.

15 (b) *Clean Energy Lender* means a private lender providing a Clean Energy Loan.

16 (c) *Clean Energy Loan* means any loan made by a private lender to a property owner
17 under the Clean Energy Loan Program.

18 (D) *CLEAN ENERGY LOAN FINANCING AGREEMENT* MEANS AN AGREEMENT BETWEEN A
19 PROPERTY OWNER AND A CLEAN ENERGY LENDER PROVIDING FOR THE TERMS AND
20 CONDITIONS OF A CLEAN ENERGY LOAN.

21 (E) *CLEAN ENERGY LOAN PROGRAM OR PROGRAM* MEANS THE CLEAN ENERGY LOAN
22 PROGRAM ESTABLISHED UNDER THIS SUBTITLE AND SECTION §1-1101 ET SEQ OF THE
23 LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND TO
24 PROVIDE LOANS TO PROPERTY OWNERS TO FINANCE QUALIFYING PROJECTS.

25 ([[d]]F) *Clean Energy Loan Program Administrator* means any person or entity selected
26 by the county to manage the Clean Energy Loan Program.

27 ([[e]]G) *Clean Energy Loan Obligation* means all indebtedness and obligations of a
28 property owner to a Clean Energy Lender, ITS SUCCESSORS OR ASSIGNS, under a
29 Clean Energy Financing Agreement.

30 ([[f]]H) *Commercial Property* has the meaning stated in the Local Government Article,
31 [[section]]SECTION 1-1101, of the Annotated Code [[Of]]OF Maryland.

1 ([[g]]i) *Department* means the Department of Finance.

2 (j) *ENVIRONMENTAL REMEDIATION PROJECT* SHALL HAVE THE MEANING SET FORTH IN
3 SECTION 1-1101 OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF
4 MARYLAND.

5 ([[h]]k) *Property Owner* means an owner of commercial property.

6 ([[i]]L) *Person* includes an individual, receiver, trustee, guardian, executor, administrator,
7 fiduciary, or representative of any kind, or any partnership, firm, association, public
8 or private corporation, limited liability company, nonprofit entity, or any other
9 entity.

10 (M) *RESILIENCY PROJECT* SHALL HAVE THE MEANING SET FORTH IN SECTION 1-1101 OF THE
11 LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

12

13 **Section 20.1201. Program established; administration.**

14 (a) *Established.* There is a Clean Energy Loan Program to finance energy efficiency
15 projects and renewable energy projects in accordance with [[section]]SECTION 1-
16 1101, et seq., of the Local Government Article of the Annotated Code of Maryland.

17 (b) *Rules and Regulations.* The Department may adopt rules and regulations to
18 administer the Program consistent with this Subtitle.

19 (c) *Program Administrator.* The County Executive may enter into an agreement with a
20 private entity to administer the Program.

21

22 **Section 20.1202. Scope and eligibility.**

23 (a) *Scope.* [[Commercial property]] PROPERTY owners are eligible to participate in the
24 Program for nonaccelerating loans greater than [[[\$15,000.00]]\$50,000.00 [[for a
25 term of up to 20 years]].

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

27 (1) Have a 100 percent ownership interest in the property located in Howard
28 County for which improvements are proposed;

29 (2) [[Obtain an energy audit approved under program guidelines demonstrating that
30 the energy savings projected to be obtained from the improvements over the

1 life of the loan equal or exceed the principal and aggregate interest to be paid
2 over the term of the loan;

3 (3)] Demonstrate that the most recent property tax bill has been paid for the
4 property;

5 ([[4]]3) Provide a copy of written notice to all current holders of a mortgage or
6 deed of trust who have a priority recorded lien on the property and written
7 proof of express consent to the loan as a priority lien by all current holders of a
8 mortgage or deed of trust on the property; and

9 ([[5]]4) Establish that the property owner is able to repay the loan PROVIDED
10 UNDER THE CLEAN ENERGY LOAN PROGRAM, IN A MANNER SUBSTANTIALLY
11 SIMILAR TO THAT REQUIRED FOR A MORTGAGE LOAN UNDER §§ 12-127, 12-311,
12 12-409.1, 12-925, AND 12-1029 OF THE COMMERCIAL LAW ARTICLE OF THE
13 ANNOTATED CODE OF MARYLAND [[based on criteria and methods set forth in
14 Ann. Code of Md., Commercial Law article, §§ 12-409.1 and 12-925 and any
15 criteria and methods required by the Clean Energy Lender]].

16

17 **Section 20.1203. Qualifying [[improvements]] PROJECTS and costs.**

18 (a) *Qualifying [[Improvements]]PROJECTS.* The following improvements, either new or
19 replacement, qualify as RESILIENCY PROJECTS, ENVIRONMENTAL REMEDIATION
20 PROJECTS, [[an]] energy AND/OR WATER efficiency projects or renewable energy
21 projects under the Clean Energy Loan Program INCLUDING BUT NOT LIMITED TO:

- 22 (1) Solar energy equipment;
- 23 (2) Geothermal energy devices;
- 24 (3) Wind energy systems;
- 25 (4) Water conservation devices not required by law;
- 26 (5) Any construction, renovation, or retrofitting of commercial property to reduce
27 energy consumption, including, high efficiency lighting and building systems,
28 heating ventilation air conditioning (HVAC) upgrades, high efficiency boilers
29 and furnaces, high efficiency hot water heating systems, combustion and burner
30 upgrades, fuel switching, heat recovery and steam traps, building shell or

1 envelope improvements, fenestration improvements, building energy
2 management systems, and process equipment upgrades; and
3 (6) Any other improvement approved by the County OR THE PROGRAM
4 ADMINISTRATOR as qualifying as A RESILIENCY PROJECT, ENVIRONMENTAL
5 REMEDIATION PROJECT, an energy AND/OR WATER efficiency project or
6 renewable energy project.

7 (b) *Qualifying Costs.* A Clean Energy Loan may be used to pay for all costs incurred by
8 a property owner [[for the following costs]] in connection with the qualifying
9 improvements INCLUDING, BUT NOT LIMITED TO:

- 10 (1) The cost of the energy audit;
- 11 (2) Feasibility studies and reports;
- 12 (3) The design, installation, and construction of the qualifying improvements;
- 13 (4) Commissioning;
- 14 (5) Energy savings or performance guaranty or insurance; [[and]]
- 15 (6) PROJECT MANAGEMENT;
- 16 (7) BUILDING ACCREDITATION;
- 17 (8) PERMITTING AND ADMINISTRATIVE FEES;
- 18 (9) POST-INSTALLATION EVALUATION, MEASUREMENT AND VERIFICATION; AND
- 19 ([[6]])10) Closing costs of the loan.

20
21 **Section 20.1204. Real property tax surcharge.**

22 (a) *Repayment of Loans.* A property owner participating in the Clean Energy Loan
23 program shall repay the loan through a surcharge on the owner's real property tax
24 bill. Upon receipt of written notice from the Clean Energy Loan Program
25 Administrator of the execution of a Clean Energy Loan Financing Agreement, the
26 County shall, add the surcharge to the tax property bill on July 1 of the year
27 immediately following the execution of the Agreement. The surcharge shall
28 constitute a first lien on the property from the date it becomes payable until the
29 unpaid surcharge and interest and penalties on the surcharge are paid in full,
30 regardless of a change in ownership, whether voluntary or involuntary. A person that
31 acquires property subject to a surcharge assumes the obligation to pay the surcharge.

- 1 (b) *Calculation.* The surcharge for a Clean Energy Loan shall include the Clean Energy
2 Loan Obligation and any administrative costs incurred by the County. The included
3 administrative costs shall be the actual expenses incurred to administer the program.
- 4 (c) *Agreement.* The property owner shall execute an agreement with the County and the
5 Clean Energy Lender that will be recorded in the Land Records of Howard County,
6 at the expense of the owner, and which shall include:
- 7 (1) The date the Clean Energy Loan was made to the property owner and the
8 property became subject to the surcharge;
 - 9 (2) The term of the Clean Energy Loan and the surcharge;
 - 10 (3) The amount of the Clean Energy Loan Obligation and estimated county
11 administrative costs for the first year;
 - 12 (4) The annual principal and interest amount for each year of the term of the loan,
13 including any partial year prorated amounts;
 - 14 (5) The prepayment requirements and any prepayment premium that may apply, if
15 the loan is a prepayable Clean Energy Loan;
 - 16 (6) Agreement by the property owner to repay all Clean Energy Loan Obligations
17 and the county's administrative costs through a surcharge included on the
18 owner's real property tax bill due and payable on the same date as the real
19 property tax bill;
 - 20 (7) Acknowledgement by the property owner that an unpaid Clean Energy Loan
21 surcharge constitutes a first lien on the property that has priority over prior or
22 subsequent liens in favor of private parties, and that the surcharge will continue
23 as a lien on the property from the date it becomes payable until the unpaid
24 surcharge and interest and penalties on the surcharge are paid in full, regardless
25 of a change in ownership of the property, whether voluntary or involuntary;
 - 26 (8) Acknowledgement by the property owner and the lender that the County has no
27 liability for the Clean Energy Loan Obligation or any costs associated with the
28 collection of amounts due under the Clean Energy Financing Agreement; and
 - 29 (9) Acknowledgement by the property owner that an overdue surcharge shall be
30 collected pursuant to Ann. Code of Md., Tax-Property article, title 14, subtitle 8
31 and section 20.140 of this Code.

1 (d) *Default.* If a property owner defaults on the Clean Energy Loan Surcharge, the lien
2 will be collected pursuant to Ann. Code of Md., Tax-Property article, title 14,
3 subtitle 8 and section 20.140 of this Code, irrespective of whether property taxes (or
4 any other taxes, charges or assessments) are due and owing. THE COUNTY SHALL
5 NOT INCUR ANY LIABILITY TO THE CLEAN ENERGY LENDER OR OTHERS IN THE EVENT
6 OF DEFAULT.

7 (e) *Credit of Payments.* Payments received from a property owner shall be credited first
8 to all County taxes, assessments, and charges.

9 (f) *County to Forward Surcharges Collected.* The County shall forward the surcharges
10 to the Clean Energy Lenders, ITS SUCCESSORS OR ASSIGNS, or the Program
11 Administrator within 30 days [[of receipt]]AFTER THE LAST DAY OF THE MONTH IN
12 WHICH SUCH AMOUNTS ARE COLLECTED.

13 (g) *County Liability.* Except for the obligation to forward surcharges under subsection
14 (f) of this section, the County does not incur any liability by participating in the
15 Clean Energy Loan Program and the County shall not incur any liability to the Clean
16 Energy Lender or others in the event of default.

17
18 **Section 20.1205. Financing.**

19 (a) *Private Lenders; Terms.* Any private lender may provide a Clean Energy Loan, and
20 the Clean Energy Financing agreement that evidences the loan may include any
21 terms and conditions permitted by law. THE CLEAN ENERGY LOAN MUST BE REPAYED
22 OVER A TERM NOT TO EXCEED THE USEFUL LIFE OF THE PROJECT AS DETERMINED BY
23 THE PROGRAM.

24 (b) *County Role.* The County's role in the Clean Energy Loan Program is limited to
25 sponsoring the Program and collecting and forwarding the surcharges imposed under
26 the Program. The County may not provide Clean Energy Loans or other financing in
27 connection with the Program.

28
29 ***Section 2. And be it further enacted that the Maryland Clean Energy Center and its***
30 ***designee is hereby authorized and directed to serve as the Clean Energy Loan Program***
31 ***Administrator under the terms of a separate agreement.***

1

2 ***Section 3. And Be It Further Enacted*** by the County Council of Howard County,
3 *Maryland, that this Act shall become effective 61 days after its enactment.*