

HOUSE BILL 995

C5, M3

2lr2821

By: **Delegate Niemann**

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Energy Administration – Sustainable Energy Regulated Entity**
3 **Financing Program**

4 FOR the purpose of authorizing the Maryland Energy Administration to create a
5 Sustainable Energy Regulated Entity Financing Program to authorize
6 sustainable energy regulated entities to provide residential renewable energy
7 installations and residential energy efficiency measures to residential property
8 owners under certain qualified contracts; stating the intent of the General
9 Assembly; requiring the Administration to manage, supervise, and administer a
10 certain Program; requiring the Administration to adopt certain regulations
11 under certain circumstances; authorizing the Administration to enter into
12 certain contracts; authorizing the Administration to collect certain reasonable
13 fees from sustainable energy regulated entities; authorizing the Administration
14 to authorize certain sustainable energy regulated entities to enter into certain
15 qualified contracts with certain persons, directly bill certain persons, and
16 enforce payment under a certain qualified contract according to certain
17 provisions; authorizing the Administration to limit certain authorizations in a
18 certain manner or to authorize more than one sustainable energy regulated
19 entity to operate in a certain territory or offer certain products; requiring the
20 Administration to perform a certain study before developing and implementing
21 a certain Program; authorizing the Administration to develop and implement a
22 test or pilot program; requiring a qualified contract to meet certain
23 requirements established by the Administration and to require certain actions;
24 requiring the Administration, by regulation or order, to establish certain
25 requirements for a certain qualified contract; prohibiting a certain sustainable
26 energy regulated entity from entering into a certain qualified contract unless
27 certain conditions have been met; authorizing a property owner to subject
28 property to a certain qualified contract by recording or authorizing the
29 recordation of the qualified contract in a certain manner; providing that a
30 person that acquires property subject to a certain qualified contract assumes a
31 certain obligation; authorizing the Administration to revoke a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 authorization if the Administration makes a certain determination; authorizing
2 a certain sustainable energy regulated entity to collect payments that are in
3 arrears under a certain qualified contract, by the imposition of a lien on a
4 certain property in accordance with the Maryland Contract Lien Act; adding a
5 certain qualified contract recorded under a certain provision of law to the
6 definition of a “contract” under the Maryland Contract Lien Act; requiring the
7 Administration to report to the General Assembly on or before a certain date;
8 defining certain terms; and generally relating to the Sustainable Energy
9 Regulated Entity Financing Program.

10 BY adding to

11 Article – State Government

12 Section 9–20C–01 through 9–20C–08 to be under the new subtitle “Subtitle 20C.
13 Sustainable Energy Regulated Entities”

14 Annotated Code of Maryland

15 (2009 Replacement Volume and 2011 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article – Real Property

18 Section 14–201(b)

19 Annotated Code of Maryland

20 (2010 Replacement Volume and 2011 Supplement)

21 BY repealing and reenacting, without amendments,

22 Article – Real Property

23 Section 14–202

24 Annotated Code of Maryland

25 (2010 Replacement Volume and 2011 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

28 **Article – State Government**

29 **SUBTITLE 20C. SUSTAINABLE ENERGY REGULATED ENTITIES.**

30 **9–20C–01.**

31 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
32 **INDICATED.**

33 **(B) “ADMINISTRATION” MEANS THE MARYLAND ENERGY**
34 **ADMINISTRATION.**

35 **(C) “PROGRAM” MEANS THE SUSTAINABLE ENERGY REGULATED**
36 **ENTITY FINANCING PROGRAM.**

1 (D) “QUALIFIED CONTRACT” MEANS A CONTRACT BETWEEN A
2 RESIDENTIAL PROPERTY OWNER AND A SUSTAINABLE ENERGY REGULATED
3 ENTITY THAT MEETS THE REQUIREMENTS OF § 9–20C–04 OF THIS SUBTITLE.

4 (E) “RESIDENTIAL ENERGY EFFICIENCY MEASURE” MEANS A PRODUCT
5 OR AN IMPROVEMENT TO A STRUCTURE THAT, WHEN INSTALLED, RESULTS IN A
6 REDUCTION OF ENERGY USAGE IN THAT STRUCTURE.

7 (F) “RESIDENTIAL RENEWABLE ENERGY INSTALLATION” MEANS A
8 PRODUCT THAT, WHEN INSTALLED ON RESIDENTIAL PROPERTY, PROVIDES
9 ENERGY SAVINGS OR GENERATES ENERGY FROM A RENEWABLE SOURCE.

10 (G) “SUSTAINABLE ENERGY REGULATED ENTITY” MEANS A PERSON
11 AUTHORIZED BY THE ADMINISTRATION UNDER THIS SUBTITLE TO PROVIDE
12 SUSTAINABLE ENERGY PRODUCTS TO RESIDENTIAL PROPERTY OWNERS UNDER
13 A QUALIFIED CONTRACT.

14 **9–20C–02.**

15 THIS SUBTITLE IS INTENDED TO PROMOTE ENERGY CONSERVATION AND
16 THE USE OF RENEWABLE ENERGY BY PROVIDING A SECURE FORM OF
17 LONG–TERM FINANCING TO FACILITATE THE IMPLEMENTATION OF
18 RESIDENTIAL RENEWABLE ENERGY INSTALLATIONS AND RESIDENTIAL ENERGY
19 EFFICIENCY MEASURES ON OR IN RESIDENTIAL PROPERTIES.

20 **9–20C–03.**

21 (A) THE ADMINISTRATION MAY CREATE A SUSTAINABLE ENERGY
22 REGULATED ENTITY FINANCING PROGRAM TO AUTHORIZE SUSTAINABLE
23 ENERGY REGULATED ENTITIES TO PROVIDE RESIDENTIAL RENEWABLE ENERGY
24 INSTALLATIONS AND RESIDENTIAL ENERGY EFFICIENCY MEASURES TO
25 RESIDENTIAL PROPERTY OWNERS UNDER QUALIFIED CONTRACTS IN
26 ACCORDANCE WITH THIS SUBTITLE.

27 (B) THE ADMINISTRATION SHALL MANAGE, SUPERVISE, AND
28 ADMINISTER A PROGRAM CREATED UNDER THIS SUBTITLE.

29 (C) IF THE ADMINISTRATION CREATES A PROGRAM UNDER THIS
30 SUBTITLE, THE ADMINISTRATION SHALL ADOPT REGULATIONS THAT:

31 (1) ENSURE THAT FINANCING IS PROVIDED ONLY TO A PROJECT
32 THAT CARRIES OUT THE PURPOSES STATED IN A QUALIFIED CONTRACT;

1 **(2) ESTABLISH ELIGIBILITY CRITERIA FOR SUSTAINABLE ENERGY**
2 **REGULATED ENTITIES, INCLUDING A REQUIRED MINIMUM LEVEL OF**
3 **CAPITALIZATION;**

4 **(3) ESTABLISH ELIGIBILITY REQUIREMENTS FOR PROPERTY**
5 **OWNERS THAT GIVE DUE REGARD TO THE OWNER'S ABILITY TO PAY IN A**
6 **MANNER SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS FOR A MORTGAGE**
7 **LOAN UNDER §§ 12-127, 12-311, 12-409.1, 12-925, AND 12-1049 OF THE**
8 **COMMERCIAL LAW ARTICLE;**

9 **(4) DEFINE AND PLACE LIMITS ON ELIGIBLE RESIDENTIAL**
10 **RENEWABLE ENERGY INSTALLATIONS AND ELIGIBLE RESIDENTIAL ENERGY**
11 **EFFICIENCY MEASURES;**

12 **(5) ESTABLISH COST-EFFECTIVENESS REQUIREMENTS FOR**
13 **ELIGIBLE RESIDENTIAL RENEWABLE ENERGY INSTALLATIONS AND ELIGIBLE**
14 **RESIDENTIAL ENERGY EFFICIENCY MEASURES;**

15 **(6) ESTABLISH PAYBACK REQUIREMENTS, RATE-OF-RETURN AND**
16 **INTEREST RATE GUIDELINES, AND LIMITS FOR QUALIFIED CONTRACTS;**

17 **(7) ESTABLISH MECHANISMS FOR INDEPENDENT QUALITY**
18 **CONTROL AND QUALITY ASSURANCE;**

19 **(8) MARKET THE PROGRAM TO PROPERTY OWNERS AND**
20 **POTENTIAL SUSTAINABLE ENERGY REGULATED ENTITIES; AND**

21 **(9) PROVIDE A PROCESS FOR ADOPTING BRAND NAMES FOR THE**
22 **PROGRAM AS WELL AS ELEMENTS OF THE PROGRAM.**

23 **(D) THE ADMINISTRATION MAY ENTER INTO CONTRACTS WITH THIRD**
24 **PARTIES TO ENSURE THAT:**

25 **(1) FINANCING IS PROVIDED ONLY TO PROJECTS THAT CARRY**
26 **OUT THE TERMS AND CONDITIONS OF QUALIFIED CONTRACTS; AND**

27 **(2) THE PURPOSES OF THE PROGRAM ARE FULFILLED.**

28 **(E) THE ADMINISTRATION MAY COLLECT REASONABLE FEES FROM**
29 **SUSTAINABLE ENERGY REGULATED ENTITIES TO:**

1 **(II) THE ADMINISTRATION'S ABILITIES TO FULFILL ITS**
2 **DUTIES REGARDING THE PROGRAM UNDER THIS SUBTITLE; AND**

3 **(2) MAY DEVELOP AND IMPLEMENT A TEST OR PILOT PROGRAM.**

4 **9-20C-04.**

5 **(A) UNDER A PROGRAM CREATED IN ACCORDANCE WITH § 9-20C-03(A)**
6 **OF THIS SUBTITLE, A QUALIFIED CONTRACT SHALL:**

7 **(1) MEET THE REQUIREMENTS ESTABLISHED BY THE**
8 **ADMINISTRATION UNDER SUBSECTION (B) OF THIS SECTION; AND**

9 **(2) REQUIRE, FOR EACH PROPERTY SUBJECT TO THE QUALIFIED**
10 **CONTRACT:**

11 **(I) THE QUALIFIED CONTRACT TO BE RECORDED IN THE**
12 **LAND RECORDS IN THE COUNTY IN WHICH EACH PROPERTY IS LOCATED; AND**

13 **(II) THE SUSTAINABLE ENERGY REGULATED ENTITY TO**
14 **NOTIFY, BY FIRST-CLASS CERTIFIED MAIL, ANY PARTY THAT HOLDS A**
15 **RECORDED MORTGAGE OR DEED OF TRUST ON PROPERTY AT THE TIME THAT**
16 **THE QUALIFIED CONTRACT BECOMES EFFECTIVE OF THE EXISTENCE OF THE**
17 **QUALIFIED CONTRACT.**

18 **(B) WHEN CREATING A PROGRAM UNDER THIS SUBTITLE, THE**
19 **ADMINISTRATION SHALL, BY ORDER OR REGULATION, ESTABLISH SPECIFIC**
20 **REQUIREMENTS FOR A QUALIFIED CONTRACT UNDER THIS SUBTITLE,**
21 **INCLUDING:**

22 **(1) TERMS AND CONDITIONS, INCLUDING:**

23 **(I) INTEREST RATES, SCHEDULES, AND RATES FOR**
24 **REPAYMENT;**

25 **(II) TIME FRAMES FOR THE RECORDATION AND NOTICE**
26 **REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION; AND**

27 **(III) ANY TERMS AND CONDITIONS REQUIRED TO CREATE**
28 **AND ENFORCE A LIEN UNDER THE MARYLAND CONTRACT LIEN ACT, TITLE 14,**
29 **SUBTITLE 2 OF THE REAL PROPERTY ARTICLE;**

1 **(2) ELIGIBILITY REQUIREMENTS FOR PROPERTY OWNERS THAT**
2 **GIVE DUE REGARD TO THE OWNER'S ABILITY TO PAY IN A MANNER**
3 **SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS FOR A MORTGAGE LOAN**
4 **UNDER §§ 12-127, 12-311, 12-409.1, 12-925, AND 12-1049 OF THE**
5 **COMMERCIAL LAW ARTICLE; AND**

6 **(3) MECHANISMS:**

7 **(I) FOR QUALITY CONTROL; AND**

8 **(II) TO ENSURE THAT THE SAVINGS TO THE PROPERTY**
9 **OWNER UNDER A QUALIFIED CONTRACT OUTWEIGH THE COST OF THE**
10 **QUALIFIED CONTRACT.**

11 **9-20C-05.**

12 **A SUSTAINABLE ENERGY REGULATED ENTITY MAY NOT ENTER INTO A**
13 **QUALIFIED CONTRACT UNLESS, FOR EACH PROPERTY THAT WOULD BE SUBJECT**
14 **TO THE QUALIFIED CONTRACT:**

15 **(1) PROPERTY TAXES AND MORTGAGE DEBT ARE CURRENT;**

16 **(2) THERE ARE NO OUTSTANDING OR UNSATISFIED LIENS; AND**

17 **(3) THERE ARE NO NOTICES OF DEFAULT OR OTHER EVIDENCE OF**
18 **PROPERTY-BASED DEBT DELINQUENCY FOR THE LESSER OF:**

19 **(I) THE 3 YEARS IMMEDIATELY PRECEDING THE CONTRACT**
20 **DATE; OR**

21 **(II) THE LENGTH OF TIME THAT THE PROPERTY OWNER HAS**
22 **OWNED THE PROPERTY.**

23 **9-20C-06.**

24 **(A) A PROPERTY OWNER MAY SUBJECT PROPERTY TO A QUALIFIED**
25 **CONTRACT BY RECORDING OR AUTHORIZING THE RECORDATION OF THE**
26 **QUALIFIED CONTRACT AMONG THE LAND RECORDS IN THE COUNTY WHERE THE**
27 **PROPERTY IS LOCATED.**

28 **(B) A PERSON WHO ACQUIRES PROPERTY SUBJECT TO A QUALIFIED**
29 **CONTRACT, WHETHER BY PURCHASE OR OTHER MEANS, ASSUMES THE**
30 **OBLIGATION TO PAY THE SUSTAINABLE ENERGY REGULATED ENTITY IN**

1 ACCORDANCE WITH THE RATE AND PAYMENT SCHEDULES IN THE QUALIFIED
2 CONTRACT.

3 **9-20C-07.**

4 **THE ADMINISTRATION MAY REVOKE THE AUTHORIZATION OF A**
5 **SUSTAINABLE ENERGY REGULATED ENTITY UNDER THIS SUBTITLE IF THE**
6 **ADMINISTRATION DETERMINES THAT:**

7 **(1) THE SUSTAINABLE ENERGY REGULATED ENTITY IS NOT**
8 **COMPLYING WITH THE TERMS OF THE AUTHORIZATION;**

9 **(2) THERE ARE AN EXCESSIVE NUMBER OF CONSUMER**
10 **COMPLAINTS; OR**

11 **(3) THE AUTHORIZATION IS NO LONGER SERVING THE PURPOSE**
12 **OF THIS SUBTITLE.**

13 **9-20C-08.**

14 **A SUSTAINABLE ENERGY REGULATED ENTITY MAY COLLECT PAYMENTS**
15 **UNDER A QUALIFIED CONTRACT THAT ARE IN ARREARS, INCLUDING THE**
16 **PRINCIPAL, INTEREST, LATE CHARGES, COSTS OF COLLECTION, AND**
17 **REASONABLE ATTORNEY'S FEES, BY THE IMPOSITION OF A LIEN ON PROPERTY**
18 **THAT IS SUBJECT TO THE CONTRACT IN ACCORDANCE WITH THE MARYLAND**
19 **CONTRACT LIEN ACT, TITLE 14, SUBTITLE 2 OF THE REAL PROPERTY**
20 **ARTICLE.**

21 **Article – Real Property**

22 14-201.

23 (b) (1) “Contract” means a real covenant running with the land or a
24 contract recorded among the land records of a county or Baltimore City.

25 (2) “Contract” includes a [declaration]:

26 **(I) DECLARATION** or bylaws recorded under the provisions of
27 the Maryland Condominium Act or the Maryland Real Estate Time-Sharing Act; **OR**

28 **(II) QUALIFIED CONTRACT RECORDED UNDER THE**
29 **PROVISIONS OF TITLE 9, SUBTITLE 20C OF THE STATE GOVERNMENT ARTICLE.**

30 14-202.

1 (a) A lien on property may be created by a contract and enforced under this
2 subtitle if:

3 (1) The contract expressly provides for the creation of a lien; and

4 (2) The contract expressly describes:

5 (i) The party entitled to establish and enforce the lien; and

6 (ii) The property against which the lien may be imposed.

7 (b) A lien may only secure the payment of:

8 (1) Damages;

9 (2) Costs of collection;

10 (3) Late charges permitted by law; and

11 (4) Attorney's fees provided for in a contract or awarded by a court for
12 breach of a contract.

13 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December
14 31, 2012, the Maryland Energy Administration shall report to the General Assembly,
15 in accordance with § 2-1246 of the State Government Article, on the Administration's
16 progress in carrying out the requirements of this Act.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 July 1, 2012.