

Chapter 625

(House Bill 621)

AN ACT concerning

Maryland Energy Administration – Regulated Sustainable Energy Contract Program

FOR the purpose of authorizing the Maryland Energy Administration to create a Regulated Sustainable Energy Contract Program to authorize qualified contractors to provide residential renewable energy installations and residential energy efficiency measures to residential property owners under certain regulated sustainable energy contracts; stating the intent of the General Assembly; requiring the Administration to manage, supervise, and administer a certain Program; requiring the Administration to adopt certain regulations under certain circumstances; authorizing the Administration to enter into certain contracts; authorizing the Administration to collect certain reasonable fees from qualified contractors; authorizing the Administration to authorize certain qualified contractors to enter into certain regulated sustainable energy contracts with certain persons, directly bill certain persons, and enforce payment under a certain regulated sustainable energy contract according to certain provisions; authorizing the Administration to limit certain authorizations in a certain manner or to authorize more than one qualified contractor to operate in a certain territory or offer certain products; requiring the Administration to perform a certain study before developing and implementing a certain Program; authorizing the Administration to develop and implement a test or pilot program; requiring the Administration to ensure that financing authorized under this Act complies with certain provisions; requiring a regulated sustainable energy contract to meet certain requirements established by the Administration and to require certain actions; establishing a time period during which a certain person may object to a regulated sustainable energy contract; requiring that an objection made to a regulated sustainable energy contract be in writing and addressed to certain persons; prohibiting a regulated sustainable energy contract from becoming effective if certain requirements are met; requiring the Administration, by regulation or order, to establish certain requirements for a certain regulated sustainable energy contract; prohibiting a certain qualified contractor from entering into a certain regulated sustainable energy contract unless certain conditions have been met; authorizing a property owner to subject property to a certain regulated sustainable energy contract by recording or authorizing the recordation of the regulated sustainable energy contract in a certain manner; providing that a person that acquires property subject to a certain regulated sustainable energy contract assumes a certain obligation; requiring a certain person selling or transferring a certain property to provide written notice to the person acquiring

the property that the person acquiring the property shall assume a certain obligation; authorizing the Administration to revoke a certain authorization if the Administration makes a certain determination; authorizing a certain qualified contractor to collect payments that are in arrears under a certain regulated sustainable energy contract, by the imposition of a lien on a certain property in accordance with the Maryland Contract Lien Act; prohibiting a lien imposed by a certain qualified contractor from taking priority over a lien, mortgage, deed of trust, or other security interest that is already attached to the property; prohibiting a party that holds a recorded mortgage or deed of trust on a certain property from being charged for any amount due on a certain regulated sustainable energy contract; requiring payment on a certain regulated sustainable energy contract to resume when the property subject to the regulated sustainable energy contract is sold or transferred to a certain person; adding a certain regulated sustainable energy contract recorded under a certain provision of law to the definition of a “contract” under the Maryland Contract Lien Act; requiring the Administration to report to the General Assembly on or before a certain date; defining certain terms; and generally relating to the Regulated Sustainable Energy Contract Program.

BY adding to

Article – State Government

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

Annotated Code of Maryland

(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – Real Property

Section 14–201(b)

Annotated Code of Maryland

(2010 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, without amendments,

Article – Real Property

Section 14–202

Annotated Code of Maryland

(2010 Replacement Volume and 2012 Supplement)

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

Article – State Government

SUBTITLE 20C. REGULATED SUSTAINABLE ENERGY CONTRACTS.

9–20C–01.

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

(B) "ADMINISTRATION" MEANS THE MARYLAND ENERGY ADMINISTRATION.

(C) "PROGRAM" MEANS THE REGULATED SUSTAINABLE ENERGY CONTRACT PROGRAM.

(D) "QUALIFIED CONTRACTOR" MEANS A PERSON AUTHORIZED BY THE ADMINISTRATION UNDER THIS SUBTITLE TO PROVIDE SUSTAINABLE ENERGY PRODUCTS TO RESIDENTIAL PROPERTY OWNERS UNDER A REGULATED SUSTAINABLE ENERGY CONTRACT.

(E) "REGULATED SUSTAINABLE ENERGY CONTRACT" MEANS A CONTRACT BETWEEN A RESIDENTIAL PROPERTY OWNER AND A QUALIFIED CONTRACTOR THAT:

(1) MEETS THE REQUIREMENTS OF § 9-20C-04 OF THIS SUBTITLE; AND

(2) DOES NOT EXCEED \$30,000.

(F) "RESIDENTIAL ENERGY EFFICIENCY MEASURE" MEANS A PRODUCT OR AN IMPROVEMENT TO A STRUCTURE THAT, WHEN INSTALLED, RESULTS IN A REDUCTION OF ENERGY USAGE IN THAT STRUCTURE.

(G) "RESIDENTIAL RENEWABLE ENERGY INSTALLATION" MEANS A PRODUCT THAT, WHEN INSTALLED ON RESIDENTIAL PROPERTY, PROVIDES ENERGY SAVINGS OR GENERATES ENERGY FROM A RENEWABLE SOURCE.

9-20C-02.

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

9-20C-03.

(A) THE ADMINISTRATION MAY CREATE A REGULATED SUSTAINABLE ENERGY CONTRACT PROGRAM TO AUTHORIZE QUALIFIED CONTRACTORS TO

PROVIDE RESIDENTIAL RENEWABLE ENERGY INSTALLATIONS AND RESIDENTIAL ENERGY EFFICIENCY MEASURES TO RESIDENTIAL PROPERTY OWNERS UNDER REGULATED SUSTAINABLE ENERGY CONTRACTS IN ACCORDANCE WITH THIS SUBTITLE.

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

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

(1) ENSURE THAT FINANCING IS PROVIDED ONLY TO A PROJECT THAT CARRIES OUT THE PURPOSES STATED IN A REGULATED SUSTAINABLE ENERGY CONTRACT;

(2) ESTABLISH ELIGIBILITY CRITERIA FOR QUALIFIED CONTRACTORS, INCLUDING A REQUIRED MINIMUM LEVEL OF CAPITALIZATION;

(3) ESTABLISH ELIGIBILITY REQUIREMENTS FOR PROPERTY OWNERS THAT GIVE DUE REGARD TO THE OWNER'S ABILITY TO PAY IN A MANNER SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS FOR A MORTGAGE LOAN UNDER §§ 12-127, 12-311, 12-409.1, 12-925, AND ~~12-1049~~ 12-1029 OF THE COMMERCIAL LAW ARTICLE;

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

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

(6) ESTABLISH PAYBACK REQUIREMENTS, RATE-OF-RETURN AND INTEREST RATE GUIDELINES, AND LIMITS FOR REGULATED SUSTAINABLE ENERGY CONTRACTS;

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

(8) MARKET THE PROGRAM TO PROPERTY OWNERS AND POTENTIAL QUALIFIED CONTRACTORS; AND

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

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

(1) FINANCING IS PROVIDED ONLY TO PROJECTS THAT CARRY OUT THE TERMS AND CONDITIONS OF REGULATED SUSTAINABLE ENERGY CONTRACTS; AND

(2) THE PURPOSES OF THE PROGRAM ARE FULFILLED.

(E) THE ADMINISTRATION MAY COLLECT REASONABLE FEES FROM QUALIFIED CONTRACTORS TO:

(1) ENSURE THAT THE PURPOSES OF THE PROGRAM ARE FULFILLED; AND

(2) CARRY OUT THE ADMINISTRATION'S DUTIES UNDER THIS SUBTITLE.

(F) THE ADMINISTRATION MAY AUTHORIZE QUALIFIED CONTRACTORS TO:

(1) ENTER INTO REGULATED SUSTAINABLE ENERGY CONTRACTS WITH INDIVIDUAL RESIDENTIAL PROPERTY OWNERS, GROUPS OF RESIDENTIAL PROPERTY OWNERS, OR THE BUILDER OF A NEW RESIDENTIAL STRUCTURE;

(2) DIRECTLY BILL, IN ACCORDANCE WITH THE RATE AND PAYMENT SCHEDULES PROVIDED IN THE REGULATED SUSTAINABLE ENERGY CONTRACT, EACH PROPERTY OWNER THAT:

(I) IS A PARTY TO A REGULATED SUSTAINABLE ENERGY CONTRACT; OR

(II) OWNS PROPERTY SUBJECT TO A REGULATED SUSTAINABLE ENERGY CONTRACT; AND

(3) ENFORCE PAYMENT UNDER A REGULATED SUSTAINABLE ENERGY CONTRACT IN ACCORDANCE WITH § 9-20C-08 OF THIS SUBTITLE.

(G) THE ADMINISTRATION MAY:

(1) LIMIT THE AUTHORIZATION OF A QUALIFIED CONTRACTOR TO A PARTICULAR TERRITORY OR SPECIFIED RESIDENTIAL RENEWABLE ENERGY INSTALLATION; AND

(2) AUTHORIZE MORE THAN ONE QUALIFIED CONTRACTOR TO OPERATE IN A PARTICULAR TERRITORY OR TO OFFER SPECIFIED RESIDENTIAL RENEWABLE ENERGY INSTALLATION.

(H) THE ADMINISTRATION:

(1) BEFORE DEVELOPING AND IMPLEMENTING A PROGRAM, SHALL PERFORM A STUDY TO ASSESS:

(I) THE FEASIBILITY OF THE PROGRAM; AND

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

(2) MAY DEVELOP AND IMPLEMENT A TEST OR PILOT PROGRAM; AND

(3) NOTWITHSTANDING THE PROVISIONS IN THIS SUBTITLE, SHALL ENSURE THAT ANY FINANCING AUTHORIZED UNDER THIS SUBTITLE SHALL COMPLY WITH APPLICABLE PROVISIONS IN TITLE 12, SUBTITLES 1, 3, 4, 6, 9, AND 10 OF THE COMMERCIAL LAW ARTICLE.

9-20C-04.

(A) UNDER A PROGRAM CREATED IN ACCORDANCE WITH § 9-20C-03(A) OF THIS SUBTITLE, A REGULATED SUSTAINABLE ENERGY CONTRACT SHALL:

(1) MEET THE REQUIREMENTS ESTABLISHED BY THE ADMINISTRATION UNDER SUBSECTION ~~(B)~~ (D) OF THIS SECTION; AND

(2) REQUIRE, FOR EACH PROPERTY EXPECTED TO BE SUBJECT TO THE REGULATED SUSTAINABLE ENERGY CONTRACT:

~~(I) THE REGULATED SUSTAINABLE ENERGY CONTRACT TO BE RECORDED IN THE LAND RECORDS IN THE COUNTY IN WHICH EACH PROPERTY IS LOCATED; AND~~

~~(II)~~, THE QUALIFIED CONTRACTOR TO NOTIFY, BY FIRST-CLASS CERTIFIED MAIL, ANY PARTY THAT HOLDS A RECORDED

~~MORTGAGE OR DEED OF TRUST ON PROPERTY AT THE TIME THAT THE REGULATED SUSTAINABLE ENERGY CONTRACT BECOMES EFFECTIVE OF:~~

1. THE EXPECTED EXISTENCE AND TERMS OF THE REGULATED SUSTAINABLE ENERGY CONTRACT; AND

2. THE RIGHT OF THE PARTY THAT HOLDS A RECORDED MORTGAGE OR DEED OF TRUST TO OBJECT TO THE CONTRACT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION.

(B) (1) A PARTY THAT HOLDS A RECORDED MORTGAGE OR DEED OF TRUST ON PROPERTY THAT WOULD BE SUBJECT TO A REGULATED SUSTAINABLE ENERGY CONTRACT HAS 30 DAYS FROM RECEIPT OF THE NOTICE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION TO OBJECT TO THE CONTRACT.

(2) ANY OBJECTION TO THE CONTRACT ON THE PART OF A PARTY THAT HOLDS A RECORDED MORTGAGE OR DEED OF TRUST ON THE PROPERTY MUST BE IN WRITING AND ADDRESSED TO THE OWNER OF THE PROPERTY AND THE QUALIFIED CONTRACTOR.

(C) IF AN OBJECTION IS MADE UNDER SUBSECTION (B) OF THIS SECTION BY A PARTY THAT HOLDS A RECORDED MORTGAGE OR DEED OF TRUST ON THE PROPERTY, THE REGULATED SUSTAINABLE ENERGY CONTRACT MAY NOT BECOME EFFECTIVE AND IF EXECUTED SHALL BE VOID.

(D) WHEN CREATING A PROGRAM UNDER THIS SUBTITLE, THE ADMINISTRATION SHALL, BY ORDER OR REGULATION, ESTABLISH SPECIFIC REQUIREMENTS FOR A REGULATED SUSTAINABLE ENERGY CONTRACT UNDER THIS SUBTITLE, INCLUDING:

(1) TERMS AND CONDITIONS, INCLUDING:

(I) INTEREST RATES, SCHEDULES, AND RATES FOR REPAYMENT;

(II) A REQUIREMENT THAT, IF THERE IS NO OBJECTION BY A PARTY THAT HOLDS A RECORDED MORTGAGE OR DEED OF TRUST, THE REGULATED SUSTAINABLE ENERGY CONTRACT BE RECORDED IN THE LAND RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED;

(III) TIME FRAMES FOR THE RECORDATION ~~AND NOTICE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION; AND~~

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

(2) ELIGIBILITY REQUIREMENTS FOR PROPERTY OWNERS THAT GIVE DUE REGARD TO THE OWNER'S ABILITY TO PAY IN A MANNER SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS FOR A MORTGAGE LOAN UNDER §§ 12-127, 12-311, 12-409.1, 12-925, AND ~~12-1049~~ 12-1029 OF THE COMMERCIAL LAW ARTICLE; AND

(3) MECHANISMS:

(I) FOR QUALITY CONTROL; AND

(II) TO ENSURE THAT THE SAVINGS TO THE PROPERTY OWNER UNDER A REGULATED SUSTAINABLE ENERGY CONTRACT OUTWEIGH THE COST OF THE REGULATED SUSTAINABLE ENERGY CONTRACT.

9-20C-05.

A QUALIFIED CONTRACTOR MAY NOT ENTER INTO A REGULATED SUSTAINABLE ENERGY CONTRACT UNLESS, FOR EACH PROPERTY THAT WOULD BE SUBJECT TO THE REGULATED SUSTAINABLE ENERGY CONTRACT:

(1) PROPERTY TAXES AND MORTGAGE DEBT ARE CURRENT;

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

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

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

(II) THE LENGTH OF TIME THAT THE PROPERTY OWNER HAS OWNED THE PROPERTY; AND

(4) THE REGULATED SUSTAINABLE ENERGY CONTRACT HAS NOT BEEN OBJECTED TO UNDER § 9-20C-04(B) OF THIS SUBTITLE BY A PARTY THAT HOLDS A RECORDED MORTGAGE OR DEED OF TRUST ON THE PROPERTY THAT WOULD BE SUBJECT TO THE REGULATED SUSTAINABLE ENERGY CONTRACT.

9-20C-06.

(A) A PROPERTY OWNER MAY SUBJECT PROPERTY TO A REGULATED SUSTAINABLE ENERGY CONTRACT BY RECORDING OR AUTHORIZING THE RECORDATION OF THE REGULATED SUSTAINABLE ENERGY CONTRACT AMONG THE LAND RECORDS IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

(B) (1) ~~A~~ SUBJECT TO § 9-20C-08 OF THIS SUBTITLE, A PERSON WHO ACQUIRES PROPERTY SUBJECT TO A REGULATED SUSTAINABLE ENERGY CONTRACT, WHETHER BY PURCHASE OR OTHER MEANS, ASSUMES THE OBLIGATION TO PAY THE QUALIFIED CONTRACTOR IN ACCORDANCE WITH THE RATE AND PAYMENT SCHEDULES IN THE REGULATED SUSTAINABLE ENERGY CONTRACT.

(2) A PERSON SELLING OR TRANSFERRING A PROPERTY SUBJECT TO A REGULATED SUSTAINABLE ENERGY CONTRACT SHALL PROVIDE WRITTEN NOTICE TO THE PERSON ACQUIRING THE PROPERTY THAT THE PERSON ACQUIRING THE PROPERTY SHALL ASSUME THE OBLIGATION TO PAY THE QUALIFIED CONTRACTOR IN ACCORDANCE WITH THE RATE AND PAYMENT SCHEDULES IN THE REGULATED SUSTAINABLE ENERGY CONTRACT.

9-20C-07.

THE ADMINISTRATION MAY REVOKE THE AUTHORIZATION OF A QUALIFIED CONTRACTOR UNDER THIS SUBTITLE IF THE ADMINISTRATION DETERMINES THAT:

(1) THE QUALIFIED CONTRACTOR IS NOT COMPLYING WITH THE TERMS OF THE AUTHORIZATION;

(2) THERE ~~ARE~~ IS AN EXCESSIVE NUMBER OF CONSUMER COMPLAINTS; OR

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

9-20C-08.

(A) (1) ~~A~~ SUBJECT TO SUBSECTION (C) OF THIS SECTION, A QUALIFIED CONTRACTOR MAY COLLECT PAYMENTS UNDER A REGULATED SUSTAINABLE ENERGY CONTRACT THAT ARE IN ARREARS, INCLUDING THE PRINCIPAL, INTEREST, LATE CHARGES, COSTS OF COLLECTION, AND REASONABLE ATTORNEY'S FEES, BY THE IMPOSITION OF A LIEN ON PROPERTY THAT IS SUBJECT TO THE CONTRACT IN ACCORDANCE WITH THE MARYLAND CONTRACT LIEN ACT, TITLE 14, SUBTITLE 2 OF THE REAL PROPERTY ARTICLE.

(2) A LIEN IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT TAKE PRIORITY OVER A LIEN, MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST THAT IS ALREADY ATTACHED TO THE PROPERTY.

(B) IF A PROPERTY SUBJECT TO A REGULATED SUSTAINABLE ENERGY CONTRACT IS FORECLOSED UNDER TITLE 7, SUBTITLE 1 OF THE REAL PROPERTY ARTICLE, ANY DEFICIENCY DUE AS A RESULT OF A LIEN ARISING FROM THE REGULATED SUSTAINABLE ENERGY CONTRACT SHALL BE:

(1) ADDED TO THE TOTAL BALANCE DUE ON THE CONTRACT; AND

(2) SUBJECT TO PERIODIC PAYMENT AS PROVIDED IN THE CONTRACT.

(C) (1) IF A PARTY THAT HOLDS A RECORDED MORTGAGE OR DEED OF TRUST ON A PROPERTY SUBJECT TO A REGULATED SUSTAINABLE ENERGY CONTRACT ACQUIRES THE PROPERTY THROUGH FORECLOSURE, THE PARTY MAY NOT BE CHARGED FOR ANY AMOUNT DUE ON THE REGULATED SUSTAINABLE ENERGY CONTRACT.

(2) PAYMENT ON A REGULATED SUSTAINABLE ENERGY CONTRACT SHALL RESUME WHEN THE PROPERTY SUBJECT TO THE REGULATED SUSTAINABLE ENERGY CONTRACT IS SOLD OR TRANSFERRED TO A PERSON WHO IS NOT RELATED TO THE PERSON WHO HELD THE RECORDED MORTGAGE OR DEED OF TRUST WHEN THE PROPERTY WAS FORECLOSED.

Article – Real Property

14–201.

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

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

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

(II) REGULATED SUSTAINABLE ENERGY CONTRACT RECORDED UNDER THE PROVISIONS OF TITLE 9, SUBTITLE 20C OF THE STATE GOVERNMENT ARTICLE.

14–202.

- (a) A lien on property may be created by a contract and enforced under this subtitle if:
- (1) The contract expressly provides for the creation of a lien; and
 - (2) The contract expressly describes:
 - (i) The party entitled to establish and enforce the lien; and
 - (ii) The property against which the lien may be imposed.
- (b) A lien may only secure the payment of:
- (1) Damages;
 - (2) Costs of collection;
 - (3) Late charges permitted by law; and
 - (4) Attorney's fees provided for in a contract or awarded by a court for breach of a contract.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 31, 2013, the Maryland Energy Administration shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the Administration's progress in carrying out the requirements of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2013.

Approved by the Governor, May 16, 2013.