

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 720
Finance

(Senator Middleton)

Clean Energy Loan Programs

This bill makes various changes to provisions of State law that authorize a political subdivision to enact an ordinance or resolution establishing a Clean Energy Loan Program. Among other things, the bill specifies requirements/criteria that must be met before a loan is approved/made; specifies a maximum amount and duration of a loan; establishes a requirement that notice be provided to specified secured parties; specifies that a surcharge on a property owner's property tax bill that serves to repay a loan constitutes a lien against the property; establishes provisions relating to funding/administering a program; requires that a program comply with applicable consumer laws; requires the Maryland Energy Administration (MEA) to adopt specified regulations; and establishes a reporting requirement for the Maryland Clean Energy Center (MCEC).

The bill takes effect June 1, 2010, and only applies prospectively.

Fiscal Summary

State Effect: The bill's changes can be implemented with existing budgeted resources.

Local Effect: The bill may encourage more local governments to adopt loan programs, which could affect a local government's finances, but any resulting impact is uncertain. Under current law and under the bill, local governments have the option, but are not required, to adopt programs.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill:

- specifies that a clean energy loan program must require that, before a loan is approved, a specified energy audit of the qualifying real property be performed;
- limits the total amount of a loan to no more than 10% of the assessed value of the property and specifies that the terms of a loan must require it to be repaid within 15 years;
- includes the principal of a loan, which may include the cost of an energy audit, as well as any outstanding interest, among the costs a political subdivision may recover through a surcharge on a property owner's property tax bill;
- establishes specified criteria that must be met in order for a loan to be made, including that (1) property taxes are current; (2) there are no outstanding and unsatisfied tax liens on the property; and (3) a property owner contract for the energy efficiency or renewable energy project with specified entities;
- specifies other eligibility requirements, including a requirement that, at the time of application for a loan, a notice be sent to each secured party under any recorded mortgage or deed of trust;
- authorizes a secured party to collect and hold in an escrow account payments due on a loan;
- specifies that a surcharge on a property owner's property tax bill that serves to repay a loan, including any interest and penalty, constitutes a lien against the property and establishes various provisions relating to such liens;
- limits the liability for the loan assessment in property foreclosures to any amount in arrears at that time and prohibits the outstanding balance of the loan from being accelerated or made due in full;
- authorizes a political subdivision to offer the opportunity to participate in the program to financial institutions insured by the Federal Deposit Insurance Corporation and financial institutions of the Farm Credit System organized under the Farm Credit Act of 1971, as amended;

- authorizes a political subdivision to refer applicants to other sources of funds; cooperate with other public and private sources of funds; and contract with a nonprofit or for-profit organization to implement, administer, or fund the program; and
- requires a program to comply with applicable federal and State consumer laws and include adequate disclosures to, and training for, participating property owners.

MEA must adopt regulations to certify persons as qualified to perform the required energy audit or as qualified to act as a contractor for an energy efficiency or renewable energy project for which loans are made.

MCEC is required to report annually to the Governor and the General Assembly on all clean energy loan programs established by political subdivisions.

Current Law: Pursuant to Chapter 743 of 2009, a political subdivision may enact an ordinance or resolution establishing a Clean Energy Loan Program to provide loans to residential and commercial property owners for the financing of energy efficiency and renewable energy projects. Commercially owned renewable energy projects may not exceed 100 kilowatts of electric generating capacity. An ordinance or resolution enacted must provide for eligibility requirements for participation in the program and loan terms and conditions.

A property owner must repay a loan through a surcharge on the owner's property tax bill, and a person who acquires property subject to a surcharge assumes the obligation to pay the surcharge. A political subdivision has specified authority to issue bonds to finance loans made through the program.

Background: MEA indicates that it is partnering with MCEC and local governments to develop property-assessed clean energy (PACE) programs pursuant to Chapter 743 of 2009. MEA advises that it is investing \$4 million in federal stimulus funds to support the development and implementation of PACE programs.

The City of Annapolis announced in December 2009 that it would launch the first phase of its PACE loan program, called "Annapolis EZ (Energy Zone)," in early 2010. Montgomery County also enacted a "Home Energy Loan Program" in April 2009. MEA indicates that PACE programs make energy efficiency and renewable energy easier and more affordable for property owners, overcoming the barrier of the upfront cost of clean energy technologies.

The bill addresses certain issues raised by the Attorney General in a May 12, 2009 bill review letter to the Governor. The letter indicated that the surcharge under HB 1567

(eventually enacted as Chapter 743) of 2009 does not constitute a lien against the applicable property under State law, but that local laws could create a lien with respect to unpaid surcharges under the program authorized by HB 1567. The Attorney General also noted that there could be constitutional concerns if a lien is created without due process because of lack of notice to a mortgagee or trustee. The letter lastly noted a provision that did not account for the repayment of the loan with the surcharge.

MEA generally indicates that the intent of the bill is to strengthen and improve current law by including best practices for PACE loans and providing for other means of program administration/funding. The bill will to some extent standardize local programs, addressing issues that local governments may have otherwise addressed in local ordinances or resolutions.

Small Business Effect: Small businesses that sell or install energy efficiency or renewable energy products and services could benefit from an increase in the demand for their services to the extent that the bill results in an increase in the number of projects undertaken. Small businesses that conduct energy audits should benefit from the bill's requirement that an energy audit be performed prior to approval for a loan under a program.

Small businesses in general could benefit from the bill to the extent the bill's changes increase the availability of financing for energy efficiency and renewable energy projects.

Additional Information

Prior Introductions: None.

Cross File: Although HB 1014 (Delegate Hecht, *et al.* – Economic Matters) is designated as a cross file, it is different.

Information Source(s): Maryland Energy Administration; Department of Business and Economic Development; Attorney General's Office; Kent, Montgomery, and Worcester counties; City of Bowie; Maryland Clean Energy Center; Department of Legislative Services

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