

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1410 (Delegate Hucker)
Economic Matters

Clean Energy Loan Programs - Private Lenders - Collection of Loan Payments

This bill modifies an existing authorization for a political subdivision to establish a Clean Energy Loan Program by allowing for a private lender to provide capital for a loan under such a program and by allowing a political subdivision to collect loan payments owed to the private lender through a surcharge on the owner's property tax bill. An unpaid surcharge is, until paid, a lien on the real property on which it is imposed. State law provisions applicable to a property tax lien also apply to an unpaid surcharge lien.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: None. The bill does not directly affect State finances.

Local Effect: To the extent local governments choose to adopt programs using the authority provided in the bill relating to private lenders, local government finances may be affected, due to costs of administering the programs. However, any impacts cannot be reliably estimated. 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

Current Law:

Local Clean Energy Loan Program Authorization

Pursuant to Chapter 743 of 2009, a political subdivision may enact an ordinance or a resolution establishing a Clean Energy Loan Program to provide loans to:

- residential property owners, including low-income residential property owners, to finance energy efficiency and renewable energy projects; and
- commercial property owners, to finance energy efficiency projects and renewable energy projects with an electric generating capacity of not more than 100 kilowatts.

The program must require a property owner to repay a loan through a surcharge on the owner's property tax bill. The surcharge must be limited to an amount that allows the political subdivision to recover the costs associated with issuing bonds to finance the loan and costs associated with administering the program. A person who acquires property subject to a surcharge, whether by purchase or other means, assumes the obligation to pay the surcharge.

The ordinance or resolution enacted must provide for specified eligibility requirements and loan terms and conditions.

Property Tax Liens

Under Title 14, Subtitle 8 of the Tax-Property Article, from the date property tax on real or personal property is due, liability for the tax and a first lien attaches to the real or personal property in the amount of the tax due on the property.

Background: The Maryland Energy Administration (MEA) advises that concerns have been raised by some county governments about the legality and appropriateness of using property tax billing and collection mechanisms to recover payments for loans made by private lenders for energy efficiency and renewable energy improvements. Those concerns have been cited as barriers to implementing clean energy loan programs in the State where payments are made through a property owner's property tax bill, commonly called property-assessed clean energy (PACE) programs. PACE programs provide a property owner the benefit of being able to finance costly clean energy improvements over time and have the responsibility for the financing payments be tied to the property rather than the property owner.

Nationally, residential PACE programs that involve loans that acquire a priority lien over a mortgage appear to generally have been put on hold or foregone as a result of concerns of financial regulators about the effect on the mortgage industry of such programs. The Federal Housing Finance Agency (FHFA), which regulates Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, issued a statement in July 2010 expressing concerns about the programs, and also issued a directive in February 2011 directing Fannie Mae and Freddie Mac to continue to refrain from purchasing mortgage loans secured by properties with outstanding first lien PACE obligations. Together, Fannie Mae and Freddie Mac own or guarantee more than \$5 trillion in residential mortgages. The Office of the Comptroller of the Currency (OCC) within the U.S. Department of Treasury, which regulates national banks, issued guidance on the same day as FHFA's July 2010 statement expressing similar concerns and referencing FHFA's statement. FHFA has recently begun a rulemaking process revisiting the issue of what, if any, restrictions and conditions relating to PACE programs are necessary, in response to a court ruling in a lawsuit challenging FHFA's July 2010 statement and February 2011 directive.

It appears somewhat uncertain to what extent similar concerns apply to commercial mortgages. The U.S. Department of Energy (DOE) indicates that FHFA's July 2010 statement was specific to home mortgage lending and, while OCC's guidance referenced commercial properties, it appears there is nonetheless uncertainty as to how commercial PACE programs are affected in comparison to residential programs. At least some commercial PACE programs are being implemented in certain jurisdictions nationally, though none in Maryland. DOE indicates that generally there is "no reason to assume that commercial PACE programs with lender and owner consent provisions ... create unsafe or unsound lending practices," noting, however, that "it appears that regulators have not drawn a firm line between commercial and residential PACE programs."

Prior to the FHFA guidance in 2010, which effectively ended PACE efforts in Maryland, MEA and the Maryland Clean Energy Center (MCEC) were encouraging and supporting PACE program development in the State and program development had been undertaken in Montgomery County and the City of Annapolis. MEA and MCEC now are concentrating instead on unsecured, third-party lending. MCEC manages the Maryland Home Energy Loan Program, which offers subsidized third-party financing for energy efficiency improvements on a statewide basis.

Small Business Effect: To the extent the bill causes local governments in Maryland to implement PACE loan programs, small businesses that sell or install energy efficiency or renewable energy products could benefit. Small businesses could also benefit through participation in a program to receive financing to install a clean energy improvement. The regulatory uncertainty surrounding PACE programs in which a loan acquires a first lien, however, may prevent programs targeted for the residential sector from being implemented in the immediate future.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Energy Administration; Office of the Attorney General; Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Calvert, Caroline, Howard, and Montgomery counties; Baltimore City; Federal Housing Finance Agency; U.S. Department of Energy; Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510