

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 186

(Senator Feldman, *et al.*)

Finance

Economic Matters

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

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This bill authorizes a private lender to provide capital for a loan to a commercial property owner under a local clean energy loan program. With the express consent of any holder of a mortgage or deed of trust on a commercial property that is to be improved through a loan under the program (1) a county or municipality may collect loan payments owed to a private lender or to the county or municipality, and costs associated with administering the program, through a surcharge on the property owner's property tax bill; (2) an unpaid surcharge is, until paid, a lien on the real property it is imposed on; and (3) State law provisions applicable to a property tax lien also apply to an unpaid surcharge lien.

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Fiscal Summary

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

**Local Effect:** To the extent local governments choose to adopt clean energy loan programs using the authority provided in the bill, local government finances may be affected as a result of providing capital for the loans, if capital is not provided by a private lender, and incurring costs to administer the programs. Under current law and under the bill, local governments have the option, but are not required, to adopt programs.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Current Law:

#### *Local Clean Energy Loan Program Authorization*

Pursuant to Chapter 743 of 2009, a county or municipality 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.

A 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 local government 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 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:** Property-assessed clean energy (PACE) programs, where payments are made through a property owner's property tax bill, can 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. The Maryland Energy Administration has advised in the past that concerns were 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 had been cited as barriers to implementing PACE programs in the State.

### *PACE Programs Nationally*

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. 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. A lawsuit challenging FHFA's actions was dismissed in 2013 by a federal appeals court.

The extent to which similar concerns apply to commercial mortgages does not appear to be entirely resolved. 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, OCC has declined to clarify its comments. DOE indicates that most commercial PACE programs have assumed that having lender and owner consent provisions in a program prevent PACE financing from creating unsafe or unsound lending practices. PACENow, a nonprofit advocate for PACE program development, indicates that there are active commercial PACE programs in nine states and the District of Columbia (with projects completed on 200 buildings under 18 programs) and programs in development in another eight states.

### *PACE Program Development in Maryland*

Prior to the FHFA guidance in 2010, which effectively ended residential PACE efforts in Maryland, program development had been undertaken in Montgomery County and the City of Annapolis. Montgomery County recently enacted legislation that requires the county executive to prepare a plan for implementing a commercial PACE program.

**Small Business Effect:** To the extent the bill causes local governments in Maryland to implement commercial 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.

## **Additional Information**

**Prior Introductions:** SB 1016 of 2013 passed the Senate and was referred to the House Economic Matters Committee but no further action was taken. HB 1410 of 2012 was referred to the House Economic Matters Committee but was withdrawn prior to receiving a hearing.

**Cross File:** HB 202 (Delegate Barkley) - Economic Matters.

**Information Source(s):** Maryland Energy Administration; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Baltimore, Garrett, Howard, and Montgomery counties; Maryland Municipal League; Town of Berlin; U.S. Department of Energy; *PACENow*; Department of Legislative Services

**Fiscal Note History:** First Reader - January 23, 2014  
ncs/hlb Revised - Senate Third Reader - March 19, 2014

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