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	SUBJECT	CITY COUNCIL BILL 16-0692

CITY of
BALTIMORE
MEMO



TO DATE: July 26, 2016

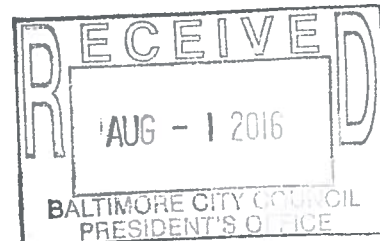
The Honorable President and Members
of the Baltimore City Council
c/o Natawna Austin
Room 400 – City Hall

I am herein reporting on City Council Bill 16-0692 introduced by Council Member Costello, President Young, Council Members Scott, Middleton, Henry, Holton, Stokes, Clarke, Spector, Kraft, Mosby, Curran, Welch, Reisinger, and Branch; at the request of CBJ Energy.

The purpose of the Bill is to establish a Property Assessed Clean Energy Loan Program (“PACE Loan Program”) to assist qualifying commercial property owners to finance energy improvements through non-accelerating PACE loans from participating private lenders; authorize the City to collect PACE Loan payments owed to a private lender, as well as certain PACE Program Administrative costs, through a surcharge on the property owner’s real property tax bill; provide that any unpaid surcharge constitutes a lien on the real property on which it is imposed; provide for the scope of and eligibility for participation in the PACE Loan Program; provide for the administration of the PACE Loan Program; establish default procedures; define certain terms; and provide for a special effective date.

In 2009 the Maryland General Assembly authorized local governments to establish clean energy loan programs through ordinances or resolutions. In 2014 the General Assembly allowed private lenders to provide capital for commercial loans if done under a local clean energy loan program and, if the loan payments were not timely paid, collect the surcharge as a tax lien through the tax sale process. The surcharge would be considered a first lien on the property. The purpose of the loan program is to provide assistance to commercial property owners privately financing energy projects by repaying the loans through a surcharge on the owners’ property tax bill. Montgomery and Anne Arundel counties have enacted local ordinances to establish clean energy loan programs. During the General Assembly session, some county governments raised concerns about the legality and appropriateness of recovering private lender loan payments through the property tax billing and collection process. In a letter to then Governor O’Malley from Attorney General Gansler, it was advised that in signing the 2014 legislation into law, the local governments should include in its ordinance or resolution “...a recordation requirement that associates the loan with the property and includes notice of the special collection status of this loan. In this way, the program can be established as the legislature designed and without depriving subsequent lenders of any due process rights.”

Refers to Finance



City Council Bill 16-0692, if approved, would establish a PACE Loan Program that would allow qualifying commercial property owners to finance their energy improvements through a private lender and repay their loans through a surcharge on their real property tax bill. The City would serve as the PACE Loan Program sponsor and would facilitate the repayment of a loan through the property tax billing system. The Department of Finance, in consultation with the Office of Sustainability, would contract with a program administrator via an existing municipal contract vehicle, through competitive procurement, through a cooperative purchasing agreement of the Washington Metropolitan Council of Governments, or by entering into an agreement with a private entity. The Department of Finance, program administrator, and Office of Sustainability would adopt rules and regulations to carry out the PACE Loan Program.

The Department of Public Works has the following comments and concerns regarding this legislation:

Consultation – The Department of Public Works has an Office of Sustainable Energy with personnel experienced in energy policy, energy improvements, and energy financing models. It is recommended that the Department of Finance be given the opportunity to also consult with this Office when selecting a program administrator and when preparing and adopting rules and regulations for the PACE Loan Program.

Selection of a program administrator – While the legislation lists several options for selecting a program administrator, Section 3(i) of the Bill requires the selection to occur within 60 days of the Bill's enactment. This limited time period would appear to rule out competitive procurement as a feasible option. It is not known why a 60 day period is required, but the legislation does not make clear what the consequences are should the selection process extend beyond this stipulated period.

Responsibilities of the Department of Finance – The legislation imposes a number of new duties and responsibilities on the Department of Finance. While the Bill does allow the City to apply an administrative fee to recover costs associated with the PACE Loan Program, the Department will be taking on significant new duties to ensure privately funded energy improvement loans are repaid.

- Establish a PACE Surcharge on the property tax bill – If the City's property tax billing system is unable to add another line within the current property tax bill format for a PACE surcharge, separate bills will have to be issued at the same time and frequency as property tax bills are issued.

- Surcharge as a first lien – § 30-8(d) of the legislation does require recordation of a notice of surcharge levy in the Land Records of Baltimore City as recommended in the Attorney General’s 2014 letter to the Governor. The Department of Finance is charged with this responsibility.
- Collect and remit surcharge payments – The Department of Finance will collect the surcharge payments, either through the payment of the property tax bill or through a separate bill. Finance then has 30 days after the last day of the month in which the surcharge is collected to remit the amount to the program administrator. It is presumed that Finance would have to establish some form of special accounting to manage and track full, partial or no payments for properties with PACE loans.
- Delinquent PACE surcharges – Finance must provide written notice of delinquent surcharges to the program administrator. Defaults become a lien and then become collectable through the tax sale process conducted by the Department of Finance even if no other municipal taxes or charges are owed.

Qualifying energy improvements – PACE loans would cover a broad spectrum of costs, from energy audits, to pre- and post-installation measurements and verifications, to performance guarantees, to operation and maintenance costs. Technologies that include resiliency benefits to the commercial property or to the electric grid could be considered for a PACE loan. A renewable energy project would qualify if a commercial property consumes all or a portion of the output from the project. The legislation, however, does not mention any standard minimum output consumption percentage that would make a commercial property eligible for PACE loan consideration.

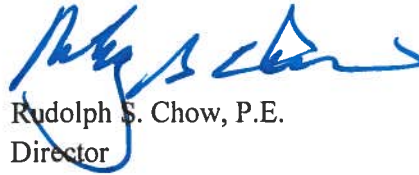
Transferability of a surcharge – § 30-8(c) notes that a person who acquires a commercial property with a surcharge, either voluntarily or involuntarily, assumes the obligation to pay the surcharge. Properties that go to tax lien certificate sale and whose liens are not purchased, default to the City. This involuntary assumption by the City could include properties with a PACE surcharge. Such a circumstance would conflict with § 30-3(a)(2) of the Bill which states the City is not liable for any clean energy loan obligation.

The City of Baltimore adopted portions of the International Energy Conservation Code for commercial properties as part of its biennial process to update the Building, Fire and Related Codes, and also adopted the Green Building Code in 2015, an overlay document used in conjunction with other codes and standards adopted by the City. Our Office of Sustainable Energy is working hard to continue to reduce City government’s reliance on fossil fuels, reduce

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its energy usage, and increase its use and promote the use of renewable energy sources. Through grants and collaborations, the Office has reached out to and assisted nonprofit organizations and small businesses to help them achieve energy saving measures that also provide these organizations with budgetary savings. This legislation would provide a mechanism for commercial property owners to repay privately funded energy improvements through a surcharge on their property tax bill. While it is important to encourage energy efficiencies and the use of alternative energy sources, Public Works is concerned about the considerable responsibilities imposed on the Department of Finance under this legislation. It is for this reason that the Department of Public Works defers to the Department of Finance on City Council Bill 16-0692.

Respectfully,



Rudolph S. Chow, P.E.
Director

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