

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

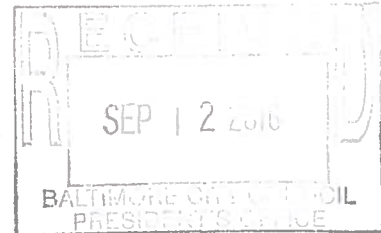


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

September 12, 2016

The Honorable President and Members
of the Baltimore City Council
Attn: Natwana Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 16-0692 – Property Assessed Clean Energy Loan Program

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 16-0692 for form and legal sufficiency. The bill establishes a Property Assessed Clean Energy Loan Program (PACE Loan Program) for commercial properties pursuant to enabling legislation in the Md. Ann. Code, Local Gov. Art., Title 1, Subtitle 11. The purpose of the PACE Loan Program is to assist qualifying commercial property owners to finance energy improvements through non-accelerating PACE Loans from participating private lenders. The bill authorizes 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. Unpaid surcharges constitute a lien on the real property on which it is imposed. The bill provides for the scope of and eligibility for participation in the PACE Loan Program. It provides for the City to choose an Administrator for the Program and establishes procedures for default.

City Council Bill 16-0-6922 is authorized by State enabling legislation that authorizes establishment of the Program, outlines of purpose of the program, sets forward certain requirements for local ordinances creating a Program and, provides for repayment of the loan through a surcharge that appears on the owner's property tax bill. Finally, the enabling law provides for the amount of the surcharge and for the creation of a lien on the real property to which it applies and for collection through the tax sale process in the case of default.

The bill provides for PACE loan repayment obligations to have priority over prior or subsequent private liens on the property. MD. Ann. Code, Tax Property Art., §14-801 provides that for tax sale purpose "tax" means "any tax, or charge of any kind due to the State or any of its political

Fav w/ Amend



subdivisions, or to any other taxing agency, that by law is a lien against the real property on which it is imposed or assessed." Tax includes interest, penalties and service charges. The bill is consistent with the parameters of the enabling legislation but does require a few adjustments. Section 14-805 that liability for a tax attaches of the tax the tax is due and at that time becomes a first lien on the property. State law therefore authorizes any lien resulting from a PACE loan as having first priority except as provided in §30-8(G) of the bill.

1. On page 4, line 24, the Finance Director is required to contract with a program administrator. Since the Director cannot enter into a contract unilaterally, "Subject to approval by the Board of Estimate and any applicable procurement provisions of Art. VI, Sec. 11 of the City Charter," should be inserted at the beginning of line 24.
2. Page 6, lines 7-9 provide for regulations to include the process by which the clean energy lender can exercise its rights as a creditor in the event of non-payment or default. This process would be subject to the terms of the finance agreement and the tax sale process as required by Sec. 30-8(I). This section should be removed or clarified.
3. On Page 9, line 5, the language is confusing perhaps insert after (1) "the amount due under".

Provided the bill is amended as recommended above, the Law Department can approve the bill for form and legal sufficiency.

Sincerely yours,

Elena R. DiPietro
Elena R. DiPietro
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Hilary Ruley, Chief Solicitor
Victor Tervala, Chief Solicitor
Jennifer Landis, Assistant Solicitor