

# HOUSE BILL 658

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By: **Delegates Niemann and Holmes**

Introduced and read first time: February 9, 2011

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Commission – Sustainable Energy Utilities**

3 FOR the purpose of authorizing the Public Service Commission, with certain  
4 exceptions, to authorize certain sustainable energy utilities for a certain  
5 purpose in accordance with certain provisions; stating the intent of the General  
6 Assembly; prohibiting the Commission from granting a certain authorization  
7 unless the Commission makes certain determinations; requiring the  
8 Commission to authorize certain authorized sustainable energy utilities to enter  
9 into certain qualified contracts with certain individuals, directly bill certain  
10 individuals, and enforce payment under a certain qualified contract according to  
11 certain provisions; authorizing the Commission to limit certain authorizations  
12 in a certain manner or to authorize more than one sustainable energy utility to  
13 operate in a certain territory or offer certain products; requiring the  
14 Commission, by order or regulation, to establish the specific terms of a  
15 sustainable utility authorization, including certain terms; requiring a qualified  
16 contract to meet certain requirements established by the Commission and to  
17 include certain requirements; requiring the Commission, by first-class certified  
18 mail, to provide certain notice to certain secured parties; requiring the  
19 Commission, by regulation or order, to establish certain requirements for a  
20 certain qualified contract, including certain items; prohibiting a certain  
21 sustainable energy utility from entering into a certain qualified contract unless  
22 certain conditions have been met; providing that a property owner may subject  
23 property to a certain qualified contract by recording or authorizing the  
24 recordation of the qualified contract in a certain manner; providing that a  
25 person who acquires property subject to a certain qualified contract assumes a  
26 certain obligation; authorizing the Commission to revoke certain authorization  
27 if the Commission makes a certain determination; authorizing a certain  
28 sustainable energy utility to collect payments that are in arrears under a  
29 certain qualified contract, including certain amounts, by the imposition of a lien  
30 on a certain property in accordance with the Maryland Contract Lien Act;  
31 requiring the Commission to adopt certain regulations to carry out certain

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 provisions of this Act; adding a certain qualified contract recorded under a  
2 certain provision of law to the definition of a contract under the Maryland  
3 Contract Lien Act; defining certain terms; and generally relating to the  
4 establishment of sustainable energy utilities.

5 BY adding to

6 Article – Public Utilities

7 Section 7–801 through 7–810 to be under the new subtitle “Subtitle 8.  
8 Sustainable Energy Utilities”

9 Annotated Code of Maryland

10 (2010 Replacement Volume)

11 BY repealing and reenacting, with amendments,

12 Article – Real Property

13 Section 14–201(b)

14 Annotated Code of Maryland

15 (2010 Replacement Volume and 2010 Supplement)

16 BY repealing and reenacting, without amendments,

17 Article – Real Property

18 Section 14–202

19 Annotated Code of Maryland

20 (2010 Replacement Volume and 2010 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Public Utilities**

24 **SUBTITLE 8. SUSTAINABLE ENERGY UTILITIES.**

25 **7–801.**

26 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
27 **INDICATED.**

28 **(B) “QUALIFIED CONTRACT” MEANS A CONTRACT BETWEEN A**  
29 **RESIDENTIAL PROPERTY OWNER AND A SUSTAINABLE ENERGY UTILITY THAT**  
30 **MEETS THE REQUIREMENTS OF § 7–805 OF THIS SUBTITLE.**

31 **(C) “SUSTAINABLE ENERGY PRODUCT” MEANS A PRODUCT THAT, WHEN**  
32 **INSTALLED ON RESIDENTIAL PROPERTY, PROVIDES ENERGY SAVINGS OR**  
33 **GENERATES ENERGY FROM A RENEWABLE SOURCE.**

34 **(D) “SUSTAINABLE ENERGY UTILITY” MEANS A PERSON AUTHORIZED**  
35 **BY THE COMMISSION UNDER THIS SUBTITLE TO PROVIDE SUSTAINABLE ENERGY**

1 PRODUCTS TO RESIDENTIAL PROPERTY OWNERS UNDER A QUALIFIED  
2 CONTRACT.

3 7-802.

4 THIS SUBTITLE IS INTENDED TO PROMOTE ENERGY CONSERVATION AND  
5 THE USE OF RENEWABLE ENERGY BY PROVIDING A SECURE FORM OF  
6 LONG-TERM FINANCING TO FACILITATE THE INSTALLATION OF SUSTAINABLE  
7 ENERGY PRODUCTS ON RESIDENTIAL PROPERTY.

8 7-803.

9 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
10 SUBSECTION, THE COMMISSION MAY AUTHORIZE A SUSTAINABLE ENERGY  
11 UTILITY TO PROVIDE SUSTAINABLE ENERGY PRODUCTS TO RESIDENTIAL  
12 PROPERTY OWNERS UNDER QUALIFIED CONTRACTS IN ACCORDANCE WITH THIS  
13 SUBTITLE.

14 (2) THE COMMISSION MAY NOT AUTHORIZE A PERSON TO  
15 OPERATE AS A SUSTAINABLE ENERGY UTILITY UNLESS THE COMMISSION  
16 DETERMINES THAT:

17 (I) THE PERSON HAS A DEMONSTRATED CAPACITY TO  
18 PROVIDE THE SUSTAINABLE ENERGY PRODUCTS THAT THE PERSON WOULD BE  
19 AUTHORIZED TO PROVIDE; AND

20 (II) THE COST OF THE SUSTAINABLE ENERGY PRODUCTS  
21 THAT THE PERSON WOULD BE AUTHORIZED TO PROVIDE WOULD BE REPAID  
22 WITHIN AT LEAST 20 YEARS AFTER THEIR DATE OF INSTALLATION.

23 (B) THE COMMISSION SHALL AUTHORIZE SUSTAINABLE ENERGY  
24 UTILITIES TO:

25 (1) ENTER INTO QUALIFIED CONTRACTS WITH INDIVIDUAL  
26 RESIDENTIAL PROPERTY OWNERS OR GROUPS OF RESIDENTIAL PROPERTY  
27 OWNERS;

28 (2) DIRECTLY BILL, IN ACCORDANCE WITH THE RATE AND  
29 PAYMENT SCHEDULES PROVIDED IN THE QUALIFIED CONTRACT, EACH  
30 PROPERTY OWNER THAT:

31 (I) IS A PARTY TO A QUALIFIED CONTRACT; OR

1                   (II) OWNS PROPERTY SUBJECT TO A QUALIFIED CONTRACT;  
2 AND

3                   (3) ENFORCE PAYMENT UNDER A QUALIFIED CONTRACT IN  
4 ACCORDANCE WITH § 7-809 OF THIS SUBTITLE.

5           (C) THE COMMISSION MAY:

6                   (1) LIMIT THE AUTHORIZATION OF A SUSTAINABLE ENERGY  
7 UTILITY TO A PARTICULAR TERRITORY OR SPECIFIED SUSTAINABLE ENERGY  
8 PRODUCTS; AND

9                   (2) AUTHORIZE MORE THAN ONE SUSTAINABLE ENERGY UTILITY  
10 TO OPERATE IN A PARTICULAR TERRITORY OR TO OFFER SPECIFIED  
11 SUSTAINABLE ENERGY PRODUCTS.

12 7-804.

13           THE COMMISSION SHALL, BY ORDER OR REGULATION, ESTABLISH THE  
14 SPECIFIC TERMS OF THE AUTHORIZATION OF A SUSTAINABLE ENERGY UTILITY,  
15 INCLUDING:

16                   (1) THE TERM;

17                   (2) THE TERRITORY;

18                   (3) THE SUSTAINABLE ENERGY PRODUCTS TO BE OFFERED;

19                   (4) THE RATE OF RETURN;

20                   (5) REQUIRED MINIMUM LEVELS OF CAPITALIZATION; AND

21                   (6) MECHANISMS FOR INDEPENDENT QUALITY CONTROL.

22 7-805.

23           (A) A QUALIFIED CONTRACT SHALL:

24                   (1) MEET THE REQUIREMENTS ESTABLISHED BY THE  
25 COMMISSION UNDER SUBSECTION (B) OF THIS SECTION; AND

26                   (2) REQUIRE, FOR EACH PROPERTY SUBJECT TO THE QUALIFIED  
27 CONTRACT:

1                   **(I) THE QUALIFIED CONTRACT TO BE RECORDED IN THE**  
2 **LAND RECORDS IN THE COUNTY IN WHICH EACH PROPERTY IS LOCATED; AND**

3                   **(II) THE SUSTAINABLE ENERGY UTILITY TO NOTIFY, BY**  
4 **FIRST-CLASS CERTIFIED MAIL, ANY PARTY THAT HOLDS A RECORDED**  
5 **MORTGAGE OR DEED OF TRUST ON PROPERTY AT THE TIME THAT THE**  
6 **QUALIFIED CONTRACT BECOMES EFFECTIVE OF THE EXISTENCE OF THE**  
7 **QUALIFIED CONTRACT.**

8           **(B) THE COMMISSION SHALL, BY ORDER OR REGULATION, ESTABLISH**  
9 **SPECIFIC REQUIREMENTS FOR A QUALIFIED CONTRACT UNDER THIS SUBTITLE,**  
10 **INCLUDING:**

11                   **(1) TERMS AND CONDITIONS, INCLUDING:**

12                           **(I) SCHEDULES AND RATES FOR REPAYMENT;**

13                           **(II) TIME FRAMES FOR THE RECORDATION AND NOTICE**  
14 **REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION; AND**

15                           **(III) ANY TERMS AND CONDITIONS REQUIRED TO CREATE**  
16 **AND ENFORCE A LIEN UNDER THE MARYLAND CONTRACT LIEN ACT, TITLE 14,**  
17 **SUBTITLE 2 OF THE REAL PROPERTY ARTICLE;**

18                   **(2) ELIGIBILITY REQUIREMENTS FOR PROPERTY OWNERS THAT**  
19 **GIVE DUE REGARD TO THE OWNER'S ABILITY TO PAY IN A MANNER**  
20 **SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS FOR A MORTGAGE LOAN**  
21 **UNDER §§ 12-127, 12-311, 12-409.1, 12-925, AND 12-1049 OF THE**  
22 **COMMERCIAL LAW ARTICLE; AND**

23                   **(3) MECHANISMS:**

24                           **(I) FOR QUALITY CONTROL; AND**

25                           **(II) TO ENSURE THAT THE SAVINGS TO THE PROPERTY**  
26 **OWNER UNDER A QUALIFIED CONTRACT OUTWEIGH THE COST OF THE**  
27 **QUALIFIED CONTRACT.**

28 **7-806.**

29           **A SUSTAINABLE ENERGY UTILITY MAY NOT ENTER INTO A QUALIFIED**  
30 **CONTRACT UNLESS, FOR EACH PROPERTY THAT WOULD BE SUBJECT TO THE**  
31 **QUALIFIED CONTRACT:**

1           **(1) PROPERTY TAXES AND MORTGAGE DEBT ARE CURRENT;**

2           **(2) THERE ARE NO OUTSTANDING OR UNSATISFIED LIENS;**

3           **(3) THERE ARE NO NOTICES OF DEFAULT OR OTHER EVIDENCE OF**  
4 **PROPERTY-BASED DEBT DELINQUENCY FOR THE LESSER OF:**

5                   **(I) THE 3 YEARS IMMEDIATELY PRECEDING THE CONTRACT**  
6 **DATE; OR**

7                   **(II) THE LENGTH OF TIME THAT THE PROPERTY OWNER HAS**  
8 **OWNED THE PROPERTY.**

9 **7-807.**

10           **(A) A PROPERTY OWNER MAY SUBJECT PROPERTY TO A QUALIFIED**  
11 **CONTRACT BY RECORDING OR AUTHORIZING THE RECORDATION OF THE**  
12 **QUALIFIED CONTRACT AMONG THE LAND RECORDS IN THE COUNTY WHERE THE**  
13 **PROPERTY IS LOCATED.**

14           **(B) A PERSON WHO ACQUIRES PROPERTY SUBJECT TO A QUALIFIED**  
15 **CONTRACT, WHETHER BY PURCHASE OR OTHER MEANS, ASSUMES THE**  
16 **OBLIGATION TO PAY THE SUSTAINABLE ENERGY UTILITY IN ACCORDANCE WITH**  
17 **THE RATE AND PAYMENT SCHEDULES IN THE QUALIFIED CONTRACT.**

18 **7-808.**

19           **THE COMMISSION MAY REVOKE THE AUTHORIZATION OF A SUSTAINABLE**  
20 **ENERGY UTILITY UNDER THIS SUBTITLE IF THE COMMISSION DETERMINES**  
21 **THAT:**

22                   **(1) THE SUSTAINABLE ENERGY UTILITY IS NOT COMPLYING WITH**  
23 **THE TERMS OF THE AUTHORIZATION;**

24                   **(2) THERE ARE AN EXCESSIVE NUMBER OF CONSUMER**  
25 **COMPLAINTS; OR**

26                   **(3) THE AUTHORIZATION IS NO LONGER SERVING THE PURPOSE**  
27 **OF THIS SUBTITLE.**

28 **7-809.**

29           **A SUSTAINABLE ENERGY UTILITY MAY COLLECT PAYMENTS UNDER A**  
30 **QUALIFIED CONTRACT THAT ARE IN ARREARS, INCLUDING THE PRINCIPAL,**

1 INTEREST, LATE CHARGES, COSTS OF COLLECTION, AND REASONABLE  
2 ATTORNEY'S FEES, BY THE IMPOSITION OF A LIEN ON PROPERTY THAT IS  
3 SUBJECT TO THE CONTRACT IN ACCORDANCE WITH THE MARYLAND CONTRACT  
4 LIEN ACT, TITLE 14, SUBTITLE 2 OF THE REAL PROPERTY ARTICLE.

5 7-810.

6 THE COMMISSION SHALL ADOPT REGULATIONS TO CARRY OUT THIS  
7 SUBTITLE.

8 **Article – Real Property**

9 14-201.

10 (b) (1) “Contract” means a real covenant running with the land or a  
11 contract recorded among the land records of a county or Baltimore City.

12 (2) “Contract” includes [a]:

13 (I) A declaration or bylaws recorded under the provisions of the  
14 Maryland Condominium Act or the Maryland Real Estate Time-Sharing Act; OR

15 (II) A QUALIFIED CONTRACT RECORDED UNDER THE  
16 PROVISIONS OF TITLE 7, SUBTITLE 8 OF THE PUBLIC UTILITIES ARTICLE.

17 14-202.

18 (a) A lien on property may be created by a contract and enforced under this  
19 subtitle if:

20 (1) The contract expressly provides for the creation of a lien; and

21 (2) The contract expressly describes:

22 (i) The party entitled to establish and enforce the lien; and

23 (ii) The property against which the lien may be imposed.

24 (b) A lien may only secure the payment of:

25 (1) Damages;

26 (2) Costs of collection;

27 (3) Late charges permitted by law; and

1                   (4)     Attorney's fees provided for in a contract or awarded by a court for  
2     breach of a contract.

3                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4     October 1, 2011.