

Bill No. 2-14
Concerning: Environmental Sustainability
- Buildings - Benchmarking
Revised: 4/22/2014 Draft No. 6
Introduced: January 28, 2014
Enacted: April 22, 2014
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Effective: _____
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Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner, Floreen, Riemer, Andrews and Navarro

AN ACT to:

- (1) require the owners of certain buildings to benchmark the energy use of certain buildings;
- (2) require the Director of the Department of ~~[[Permitting Services]]~~ Environmental Protection to issue an annual report to review and evaluate energy efficiency in certain covered buildings;
- (3) require the Director make certain benchmarking information readily available to the public;
- (4) allow the Director to waive certain requirements; ~~[[and]]~~
- (5) ~~[[require the owners of certain buildings to have an energy audit performed on certain buildings;~~
- (6) require the owners of certain buildings to assure that retro-commissioning is performed on certain buildings; and
- (7)]] establish a Benchmarking Work Group to review the implementation of Chapter 18A, Article 6 and report to the Council and Executive with recommendations on implementing building benchmarking for privately-owned buildings; and
- (6) generally amend County law regarding energy efficiency and environmental sustainability.

By adding

Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-34, 18A-35, 18A-36, and 18A-37
Article 6
Sections ~~[[18A-38, 18A-37,]]~~ 18A-38, 18A-39, 18A-40, 18A-41, 18A-42, and 18A-43
~~[[Article 7~~
Sections 18A-44, 18A-45, 18A-46, 18A-47, 18A-48, 18A-49, and 18A-50]]

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 18A is amended by [[adding]] amending Article 5 to add**
 2 **Sections 18A-34, 18A-35, 18A-36, and 18A-37; Article 6, consisting of Sections**
 3 **18A-38, 18A-39, 18A-40, 18A-41, 18A-42, and 18A-43[[; and Article 7,**
 4 **consisting of Sections 18A-44, 18A-45, 18A-46, 18A-47, 18A-48, 18A-49, and**
 5 **18A-50]] as follows:**

6 **Article 5. Commercial Property Assessed Clean Energy Program.**

7 **18A-34 – 18A-37. Reserved.**

8 **Article 6. Building Energy Use Benchmarking.**

9 **18A-38. Definitions.**

10 In this Article, the following words have the meanings indicated:

11 *Benchmark* means to track and input a building’s energy consumption data
 12 and other relevant building information for 12 consecutive months, as
 13 required by the benchmarking tool, to quantify the building’s energy use.

14 *Benchmarking tool* means the website-based software, commonly known as
 15 ENERGY STAR Portfolio Manager, or any successor system, developed
 16 and maintained by the United States Environmental Protection Agency to
 17 track and assess the relative energy use of buildings nationwide.

18 *Certificate of use and occupancy* means the certificate issued by the Director
 19 that allows a building to be occupied and used.

20 *County building* means any building owned by the County, or any group of
 21 buildings owned by the County that have the same property identification
 22 number, that equals or exceeds 50,000 square feet gross floor area, as
 23 identified by the Director

24 *Covered building* means any [[building owned by the]] County building,
 25 Group 1 covered building, or Group 2 covered building[[, as defined in this

26 Article]]. *Covered building* does not include any building with more than
 27 10% occupancy which is used for

- 28 (1) public assembly in a building without walls;
- 29 (2) warehousing;
- 30 (3) self storage; or
- 31 (4) a use classified as manufacturing and industrial or transportation,
 32 communication, and utilities.

33 *Data center* means a space designed and equipped to meet the needs of high
 34 density computing equipment such as server racks, used for data storage and
 35 processing, as defined by the benchmarking tool.

36 *Department* means the Department of [[Permitting Services]] *Environmental*
 37 *Protection*.

38 *Director* means the Director of the Department or the Director’s designee.

39 *Energy performance score* or *ENERGY STAR* score means the numerical
 40 score produced by the benchmarking tool, or any successor score, that
 41 assesses a building’s energy performance compared to similar buildings,
 42 based on source energy use, operating characteristics, and geographic
 43 location.

44 *Energy use intensity* or *EUI* means a numeric value calculated by the
 45 benchmarking tool that represents the energy consumed by a building
 46 relative to its size.

47 *Group 1 covered building* means any nonresidential building, or any group
 48 of nonresidential buildings that have the same property identification
 49 number, not owned by the County that equals or exceeds 250,000 square feet
 50 gross floor area, as identified by the Director.

51 *Group 2 covered building* means any nonresidential building, or any group
 52 of nonresidential buildings that have the same property identification

53 number, not owned by the County that equals or exceeds 50,000 square feet
 54 gross floor area but is less than 250,000 square feet gross floor area, as
 55 identified by the Director.

56 Gross floor area means the sum of the gross horizontal area of the several
 57 floors of a building or structure measured from the exterior faces of the
 58 exterior walls or from the center line of party walls. In a covered but
 59 unenclosed area, such as a set of gasoline pumps or a drive-through area,
 60 gross floor area means the covered area. Gross floor area does not include
 61 any:

62 [[a]] (1) basement or attic area with a headroom less than 7 feet 6 inches;

63 [[b]] (2) area devoted to unenclosed mechanical, heating, air conditioning,
 64 or ventilating equipment;

65 [[c]] (3) parking structure; or

66 [[d]] (4) accessory structure to a residential building.

67 Licensed professional means a professional engineer or a registered architect
 68 licensed in the State, or another trained individual as defined in applicable
 69 County regulations.

70 Reported benchmarking information means the descriptive information
 71 about a building, its operating characteristics, and information generated by
 72 the benchmarking tool regarding the building's energy consumption and
 73 efficiency. Reported benchmarking information includes the building
 74 identification number, address, gross floor area, energy performance score,
 75 energy use intensity, and annual greenhouse gas emissions.

76 Residential occupancy means the occupancy of dwelling units in any
 77 building that includes one or more dwellings.

78 **18A-39. Energy use benchmarking.**

79 (a) County buildings. No later than June 1, 2015, and every June 1
 80 thereafter, the County must benchmark all buildings owned by the
 81 County for the previous calendar year.

82 (b) Group 1 covered buildings. No later than ~~[[June 1, 2014]]~~ December
 83 1, 2016, and every ~~[[June]]~~ December 1 thereafter, the owner of any
 84 Group 1 covered building must benchmark the building for the
 85 previous calendar year. ~~[[However, the owner of any Group 1~~
 86 covered building with at least 10% residential occupancy, as measured
 87 by square footage, must benchmark the building for the previous
 88 calendar year no later than June 1, 2015, and no later than June 1st
 89 each year thereafter.]] The owner must report the benchmarking
 90 information to the Department no later than ~~[[July]]~~ January 1 each
 91 year.

92 ~~[[b)]]~~ (c) Group 2 covered buildings. No later than ~~[[June 1, 2015]]~~
 93 December 1, 2017, and ~~[[no later than June 1st each year]]~~ every
 94 December 1 thereafter, the owner of any Group 2 covered building
 95 must benchmark the building for the previous calendar year.
 96 ~~[[However, the owner of any Group 2 covered building with 10% or~~
 97 more residential occupancy must benchmark the building for the
 98 previous calendar year no later than June 1, 2016, and no later than
 99 June 1st each year thereafter.]] The owner must report the
 100 benchmarking information to the Department no later than ~~[[July]]~~
 101 January 1 each year.

102 (d) Waiver. The Director may waive the requirements of this Section if
 103 the owner of a covered building documents, in a form required by
 104 regulation, that the building:

- 105 (1) is in financial distress, defined as a building that:
 106 (A) is the subject of a tax lien sale or public auction due to
 107 property tax arrearages;
 108 (B) is controlled by a court appointed receiver; or
 109 (C) was recently acquired by a deed in lieu of foreclosure;
 110 (2) had average physical occupancy of less than 50% throughout
 111 the calendar year for which benchmarking is required; or
 112 (3) is new construction and received its certificate of use and
 113 occupancy during the calendar year for which benchmarking is
 114 required.

115 **18A-40. Data Verification.**

- 116 (a) Verification required. Before the first benchmarking deadline
 117 required by Section 18A-39, and before each third benchmarking
 118 deadline thereafter, the owner of each covered building must assure
 119 that reported benchmarking information for that year is verified by a
 120 licensed professional. The verification must be a stamped and signed
 121 statement by a licensed professional attesting to the accuracy of the
 122 information. If the Director requests, the owner of a covered building
 123 must produce the statement available for the most recent year in
 124 which verification was required.
- 125 (b) Waiver. The Director may waive the requirements of this Section if
 126 the owner shows that compliance with this Section will cause undue
 127 financial hardship. If a no-cost or low-cost verification option is
 128 available, the Director may require the owner to use the alternative
 129 option.

130 **18A-41. Solicitation of compliance information from tenants.**

- 131 (a) Solicitation of information from tenant. An owner of a covered
132 building must request relevant information from any tenant in a
133 covered building no later than March 1 of each year in which
134 benchmarking is required by Section 18A-39. If the owner receives
135 notice that a tenant intends to vacate a unit which is subject to this
136 Section, the owner must request the information within 10 days after
137 receiving the notice to vacate.
- 138 (b) Tenant response. Within 30 days after receiving a request for
139 information from the building owner, each tenant of a unit in a
140 covered building must provide the building owner with all
141 information that the owner cannot otherwise acquire that is necessary
142 to comply with this Article.
- 143 (c) Failure of tenant to provide information.
- 144 (1) If any tenant does not provide the information required under
145 this Section to the owner of a covered building, that fact does
146 not relieve the owner of the obligation to benchmark the
147 building under Section 18A-39, using all information otherwise
148 available to the owner.
- 149 (2) If a tenant of a unit in a covered building does not provide
150 information to the owner of the building under this Section, the
151 Director must consider the owner to be in compliance with
152 Section 18A-39 if:
- 153 (A) the owner shows that the owner requested the tenant to
154 provide the information under this Section; and

155 (B) the owner benchmarked the building under Section 18A-
 156 39, using all information otherwise available to the
 157 owner.

158 **18A-42. Annual report; disclosure of benchmarking information.**

159 (a) Annual report required. By October 1 of each year, the Director must
 160 submit a benchmarking report to the County Executive and County
 161 Council. The report must review and evaluate energy efficiency in
 162 covered buildings, including:

- 163 (1) summary statistics on the most recent reported energy
 164 benchmarking information; [[and]]
- 165 (2) discussion of any energy efficiency trends, cost savings, and job
 166 creation resulting from energy efficiency improvements; and
- 167 (3) for County buildings:
 - 168 (A) the scores of County buildings benchmarked; and
 - 169 (B) whether the Director recommends any energy efficiency
 170 improvements for specific buildings.

171 (b) Disclosure of benchmarking information. The Director must make
 172 reported benchmarking information readily available to the public,
 173 including on the open data website created under Section 2-154, and
 174 the Director may exempt information from disclosure only to the
 175 extent that disclosure is prohibited under federal or state law.

176 (c) Exceptions to disclosure. To the extent allowable under state law, the
 177 Director must not make the following readily available to the public:
 178 (1) any individually-attributable reported benchmarking
 179 information from the first calendar year that a covered building
 180 is required to benchmark; and

207 Base Building system does not include any industrial process that occurs in a
 208 covered building or any system or subsystem owned by a tenant (other than
 209 a net lessee for a term of 49 years or more, including any renewal option),
 210 condominium unit owner, or cooperative unit shareholder, or a system or
 211 subsystem for which a tenant bears full maintenance responsibility and that
 212 is located in the tenant's leased space or exclusively serves that leased space.

213 Building management system means a computer-based system that monitors
 214 and controls a building's mechanical and electrical equipment, such as its
 215 HVAC, lighting, power, fire, and security system, including, at least, control
 216 of the heating equipment using interior temperature sensors.

217 County building means a covered building that is owned by the County and
 218 for which the County regularly pays all or part of the energy bills.

219 Covered building means

- 220 (1) 1 building that exceeds 50,000 gross square feet;
 221 (2) 2 or more buildings on the same tax identification number that
 222 together exceed 100,000 gross square feet; or
 223 (3) 2 or more buildings held in the condominium form of ownership that
 224 are governed by the same board of managers and that together exceed
 225 100,000 gross square feet.

226 Covered building does not include any 1, 2, or 3-family residential building.

227 Current facility requirements means the owner's current operational needs
 228 and requirements for a building, including temperature and humidity set
 229 points, operating hours, filtration, and any integrated requirements such as
 230 controls, warranty review, and service contract review.

231 Department means the Department of Environmental Protection.

232 Director means the Director of the Department or the Director's designee.

233 Energy audit or audit means a systematic process to identify and develop
 234 improvements to any base building system, including any alteration of that
 235 system and the installation of new equipment, insulation, or other generally
 236 recognized energy efficiency technology to optimize energy performance of
 237 the building and achieve energy savings.

238 Energy auditor means an individual the Department authorizes to perform
 239 energy audits and certify audit reports required by this Article.

240 Energy management system means a system incorporating interior
 241 temperature sensors and a central processing unit and controls, which are
 242 used to monitor and control electricity, gas, steam, and oil usage, as
 243 applicable, based on the need for heating.

244 Energy efficiency report means the report required under Section 18A-47.

245 Financial hardship of a building means a building that:

- 246 (1) was included on the Department of Finance's tax lien sale list within 2
 247 years before an energy efficiency report was due; or
 248 (2) is exempt from real property taxes under Maryland Code, Tax-
 249 Property Article, Sections 7-201, 7-202, and 7-204, or any successor
 250 provisions, and had negative revenue less expenses during the 2 tax
 251 years before an energy efficiency report was due.

252 Green Building Council means the U.S. Green Building Council, an
 253 organization that has developed and published the LEED rating system to
 254 measure the energy and environmental performance of a building.

255 LEED refers to the series of Leadership in Energy and Environmental
 256 Design (LEED) rating systems developed by the Green Building Council.

257 Owner means:

- 258 (1) the owner of record of a covered building;

- 259 (2) the net lessee in the case of a net lease of an entire building for a term
 260 of 49 years or more, including any renewal option;
- 261 (3) the board of directors or similar body if the covered building is a
 262 cooperative apartment or condominium corporation.

263 Registered design professional has the meaning in the latest version of the
 264 ICC International Building Code or another building code that the County
 265 adopts.

266 Retro-commissioning means a systematic process applied to an existing
 267 building that has never been commissioned to assure that the building's
 268 systems are designed, installed, functionally tested, and can be operated and
 269 maintained according to the owner's operational needs.

270 Simple payback means the number of years for projected annual energy
 271 savings to equal the amount invested in an energy conservation measure, as
 272 determined by dividing the investment by the annual energy savings.

273 Space means an area in a building enclosed by floor to ceiling walls,
 274 partitions, windows and doors.]]

275 **[[18A-45. Energy audits required.**

276 (a) Audit required. The owner must assure that an energy audit is
 277 performed on the base building systems of a covered building before
 278 filing an energy efficiency report required by this Article. Except as
 279 otherwise provided in Section 18A-49, an energy audit must be
 280 performed by or under the supervision of an energy auditor and must
 281 be performed in accordance with applicable regulations. The audit
 282 process must cover the base building system and must at least
 283 identify:

- 284 (1) any reasonable measure, including any capital improvement,
 285 that would reduce energy use or the cost of operating the

- 286 building;
- 287 (2) for each measure, the associated annual energy savings, the cost
- 288 to implement, and the simple payback, calculated by a method
- 289 approved by the Department;
- 290 (3) the building's benchmarking output consistent with the United
- 291 States Environmental Protection Administration Portfolio
- 292 Manager tool or another method the Director finds equivalent;
- 293 (4) a break-down of energy usage by system and predicted energy
- 294 savings by system after any proposed measures are
- 295 implemented; and
- 296 (5) a general assessment of how the major energy consuming
- 297 equipment and systems used in tenant spaces impact the energy
- 298 consumption of the base building systems, based on a
- 299 representative sample of spaces.
- 300 (b) *Audit process.* The energy audit process must be at least as stringent
- 301 as the Level II Energy Survey and Engineering Analysis of the 2004
- 302 edition of Procedures for Commercial Building Energy Audits
- 303 published by the ASHRAE, or another process the Director finds
- 304 equivalent.
- 305 (c) *Qualifications of auditor.* An energy auditor must be a registered
- 306 design professional with any other certification or qualification the
- 307 Director finds appropriate.
- 308 (d) *Contents of audit report.* The energy auditor must prepare and certify
- 309 a report of the energy audit. Except as otherwise provided in Section
- 310 18A-49, the audit report must include information relating to the audit
- 311 as required by applicable regulations, including the date when the
- 312 audit was completed and the information required by subsection (a).

- 313 (e) Compliance with landmarks laws. The cost estimates for any covered
314 building that is regulated by any state or federal law regulating
315 landmarks or historic buildings must include all added costs necessary
316 for the proposed work to comply with that law.
- 317 (f) Timing of energy audit. Except as otherwise provided in Section 18A-
318 49, the energy audit must be completed no earlier than 4 years before
319 the date when a covered building's energy efficiency report is filed
320 under this Article.
- 321 (g) Exceptions. An energy audit is not required if a registered design
322 professional certifies that the building complies with any of the
323 following requirements:
- 324 (1) The covered building received an EPA Energy Star label for at
325 least 2 of the 3 years before the building's energy efficiency
326 report is filed.
- 327 (2) No EPA Energy Star rating is available for the building type,
328 and a registered design professional documents that the
329 building's energy performance is 25 or more points better than
330 the performance of an average building of its type over a 2-year
331 period during the 3 years before an energy efficiency report is
332 filed, consistent with the methodology of the Leadership in
333 Energy and Environmental Design 2009 rating system for
334 Existing Buildings published by the United States Green
335 Building Council or other rating system or methodology for
336 existing buildings, as determined by the Department.
- 337 (3) The covered building received certification under the LEED
338 2009 rating system for Existing Buildings, or another rating
339 system for existing buildings the Director finds equivalent,

340 within 4 years before the building's energy efficiency report is
 341 filed.]]

342 **[[18A-46. Retro-commissioning required.**

- 343 (a) Retro-commissioning required. The owner of a covered building must
 344 assure that retro-commissioning is performed on the base building
 345 system of a covered building before filing an energy efficiency report
 346 as required by this Article. Except as otherwise provided in Section
 347 18A-49, retro-commissioning must be performed by or under the
 348 supervision of a retro-commissioning agent, as required by applicable
 349 regulations issued under subsection (b).
- 350 (b) Regulations. The County Executive must issue regulations requiring
 351 that sufficient analysis, corrections and testing have been done so that
 352 each base building system demonstrates efficient operation.
- 353 (c) Contents of retro-commissioning report. The retro-commissioning
 354 agent must prepare and certify a retro-commissioning report. Each
 355 retro-commissioning report must include information relating to the
 356 retro-commissioning as specified in applicable regulations.
- 357 (d) Timing of retro-commissioning Except as otherwise provided in
 358 Section 18A-49, each retro-commissioning must be completed no
 359 earlier than 4 years before a covered building's energy efficiency
 360 report is filed with the Department under this Article.
- 361 (e) Documentation of retro-commissioning. The owner must maintain a
 362 copy of the latest up-to-date equipment manual and the most recent
 363 retro-commissioning report at every covered building and must make
 364 either available to the Department for inspection on request.
- 365 (f) Exceptions. A retro-commissioning is not required if the covered
 366 building received certification under the LEED 2009 rating system for

Existing Buildings, or another rating system for existing buildings the Department finds equivalent, within 2 years before the building's energy efficiency report is filed and earned the LEED point for Existing Building Commissioning investigation and analysis and the LEED point for Existing Building Commissioning implementation.]]

[[18A-47. Energy efficiency report required.

(a) *Report required.* Except as provided in Section 18A-49, the owner of each covered building must file an energy efficiency report for the building during the calendar year when the report is due under this Section and every tenth calendar year thereafter.

(b) *Content of report.* Except as otherwise provided in Section 18A-49, each energy efficiency report must include, in a format approved by the Department:

(1) the building's energy audit report or documentation that an exception applies to the building; and

(2) the building's retro-commissioning report or documentation that an exception applies to the building.

(c) *Due dates.* The first energy efficiency report for each covered building in existence on July 1, 2014, and for each new building must be due, beginning with calendar year 2015, in the calendar year with a final digit that is the same as the last digit of the building's property identification number, as illustrated in the following chart:

<u>Last digit of property ID</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>

<u>number</u>										
<u>Year</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>first</u>										
<u>EER is</u>										
<u>due</u>										

390 (d) Deferral of energy efficiency report. An owner of a covered building
 391 may defer submitting an energy efficiency report for a covered
 392 building until the tenth year after the year identified in subsection (c)
 393 if the building:

394 (1) is less than 10 years old at the beginning of its first assigned
 395 calendar year; or

396 (2) has undergone substantial rehabilitation, as certified by a
 397 registered design professional, within 10 years before the
 398 calendar year when an energy efficiency report is due, if at the
 399 beginning of the calendar year the base building systems of the
 400 building comply with County law in effect for new buildings
 401 constructed on and after July 1, 2010 or in effect on the date of
 402 the substantial rehabilitation, whichever is later.

403 (e) Exceptions.

404 (1) The Director may allow an extension of time to file an energy
 405 efficiency report if the building’s owner shows that, despite the
 406 owner's good faith efforts, the owner could not complete the
 407 required energy audit and retro-commissioning before the due
 408 date for the report. The Director may allow no more than 2
 409 extensions of no more than one year each. Any extension
 410 allowed under this Section must not extend the scheduled due
 411 dates for any later energy efficiency report.

412 (2) The Director may allow one or more annual extensions of time
 413 to file an energy efficiency report because of financial hardship
 414 of the building.

415 (f) Due dates for County buildings. The first due dates for County
 416 buildings must follow a staggered schedule, from calendar year 2015
 417 through calendar year 2023, for each building in use on July 1, 2014.
 418 The Director must add each County building opened to use after that
 419 date to the schedule within 10 years after the Department of
 420 Permitting Services issues the certificate of use and occupancy for the
 421 building.

422 (g) Combined audit and retro-commissioning. An owner may perform
 423 the audit and retro-commissioning of a building in a combined process
 424 if that process meets all requirements of Sections 18A-45 and 18A-
 425 46.]]

426 **[[18A-48. Notice.**

427 The Department must notify the owner of each covered building of the
 428 requirements of this Article no later than 3 years before the calendar year when the
 429 covered building's energy efficiency report is due and in the calendar year before
 430 the calendar year when the report is due.]]

431 **[[18A-49. Early compliance.**

432 The Department may allow an owner of a covered building to comply with
 433 this Article before the deadline specified in Section 18A-47.]]

434 **[[18A-50. Regulations; penalties.**

435 (a) The County Executive may issue Method (2) regulations to administer
 436 this Article.

437 (b) Any violation of this Article is a Class A violation.]]

438 **Sec. 2. Benchmarking Work Group.**

