

Worksession 3

MEMORANDUM

March 27, 2013

TO: Planning, Housing and Economic Development Committee

FROM: Amanda Mihill, Legislative Attorney *AMihill*

SUBJECT: **Worksession:** Bill 40-12, Economic Development – Green Organization Supplement

Bill 40-12, Economic Development – Green Organization Supplement, sponsored by Council President Berliner, was introduced on December 4, 2012. A public hearing was held on January 22 at which a representative of the Executive supported Bill 40-12 (©17). Planning, Housing and Economic Development Committee worksessions were held on January 28 and February 11.

Bill 40-12 would authorize the County to provide qualified applicants a Green Organization Supplement. The County would supplement 50% of the recipient's investment in a qualified green organization, or a lower percentage set in the annual operating budget resolution, up to \$25,000. This bill would implement one of the recommendations from the Green Economy Task Force (see report excerpts on ©6). The Executive submitted a letter in support of Bill 40-12 and included \$500,000 in his FY14 recommend operating budget for this initiative (©31).

This program would be structured similarly to the County's Biotechnology Investment Incentive Tax Credit Supplement (§20-76A). To provide some context, in 2012, the County provided \$500,000 in supplement funds. According to data provided by the Department of Economic Development, there were 66 eligible transactions. The range of awards provided was \$2,117.75 to \$42,354.93 with the average award being \$7,575.76.

Prior Committee Worksessions

During the January 28 worksession on Bill 40-12, representatives from the Department of Economic Development indicated that they were developing amendments to the bill, but that the amendments were not yet ready. After that worksession, Director Silverman submitted several amendments that would:

- Redefine “green product or service” as “a product or service that measures, prevents, limits, minimizes or corrects environmental damage to water, air and soil, as well as problems related to waste, ecosystems, biodiversity, habitat or natural resource depletion. All claims related to environmental attributes, as applicable, for a product or service, shall conform to current or future guidelines published by the Federal Trade Commission

or other appropriate entities designated by the Director of the Department of Environmental Protection” (©25, lines 5-20).

- Add a definition of “investment” to mean “the contribution of money in cash or cash equivalents expressed in United States dollars, at a risk of loss, to a qualified green company in exchange for stock, a partnership or membership interest, or other ownership interest in the equity of the qualified green company, title to which ownership interest shall vest in the qualified investor but does not include debt” (©25, lines 21-26).
- Increase the minimum investment in a qualified green company from \$5,000 to \$25,000 and clarify that an investor should have limited ownership interest in the company and should not derive financial benefit from the company (©26-27, lines 39, 47-54).
- Establish an annual limit (rather than one-time supplement) that is the lesser of 50% of the investment made by the investor, 15% of the total appropriation for the Incentive Program, or \$50,000 (©28-29, lines 93-109).
- Provide for a formula-based allocation process where each qualified investment would be divided by the total amount of investments during the calendar year to derive the percentage of the annual appropriation that is paid (©29, lines 110-119).
- Change the name of the supplement to “Green Investor Incentive Program”.

Issue for Committee Discussion

Eligibility At its February 11 worksession, Committee members expressed concerns regarding the scope of companies that would be eligible for the incentive and asked Executive staff to work with Councilmember Berliner to review the legislation. After doing so, the following changes were recommended to the definition of “qualified green company” (©26, lines 27-37):

Qualified green [[organization]] company means any [[business, cooperative, or non-profit]] entity of any form duly organized and existing under the laws of any jurisdiction for the purpose of conducting business for profit, excluding a sole proprietorship, that:

- (1) [[provides a green product or service]] develops an innovative, new to the market, technology, or a unique combination of technologies, available only from that company, which adds significant value to a green product or service or is engaged in research or development of a such technology or technologies; and
- (2) implements a sustainable operation as verified by a third party.

This original language would allow any company that “provides a green product or service” to be eligible for an incentive payment.¹ The revised language would limit the incentive to those companies that either: (1) develop an innovative technology that adds significant value to a green product or service; or (2) is engaged in research or development of a technology.

Committee amendments As introduced, Bill 40-12 would prohibit an investor from receiving a payment for a geothermal or solar photovoltaic system or a green or energy efficiency improvement. At its February 11 worksession, Committee members recommended amending Bill 40-12 to clarify that an investor could not receive an incentive payment for the installation of geothermal or solar photovoltaic systems. This language is incorporated in the recommended amendments (©28, line 90). The Committee further recommended Bill 40-12 be amended to

¹ If the company implements a sustainable operation.

prohibit investors from receiving a payment for investing in retail stores that sell green products. This language is not reflected in the recommended amendments beginning on ©24 because the revised definition of qualified green company would exclude such stores.

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Expedited Bill No. 40-12
Concerning: Economic Development -
Green Organization Supplement
Revised: 11/27/2012 Draft No. 2
Introduced: December 4, 2012
Enacted: June 4, 2014
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Roger Berliner

AN ACT to:

- (1) authorize the County to provide qualified applicants a Green Organization Supplement; and
- (2) generally amend the law governing County financial incentives for investment in certain businesses.

By adding

Montgomery County Code
Chapter 20, Finance
Section 20-76C

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. Section 20-76C is inserted as follows:**

2 **20-76C. Green Organization Supplement.**

3 (a) Definitions. In this Section, the following words have the meanings
4 indicated:

5 Green product or service means the delivery of a product or service in
6 the following areas:

- 7 (1) renewable, clean, or distributed energy;
- 8 (2) energy efficiency products or services;
- 9 (3) sustainable farming and food distribution;
- 10 (4) water quality and conservation;
- 11 (5) pollution reduction and remediation;
- 12 (6) recycling, reuse, and resource recovery; or
- 13 (7) biodiversity and natural resource conservation.

14 Qualified green organization means any business, cooperative, or non-
15 profit that:

- 16 (1) provides a green product or service; and
- 17 (2) implements a sustainable operation as verified by a third party.

18 Qualified investor means any individual or entity that invests at least
19 \$5,000 in a qualified Montgomery County green organization and that is
20 required to file an income tax return in any jurisdiction. Qualified
21 investor does not include a qualified pension plan, individual retirement
22 account, or other qualified retirement plan under the Employee
23 Retirement Income Security Act of 1974, as amended, or fiduciaries or
24 custodians under such plans, or similar tax-favored plans or entities
25 under the laws of other countries.

26 Sustainable operation means an organization validated by a third party
27 under one of the following:

- 28 (1) Montgomery County Certified Green Business, as certified by the
 29 Department of Environmental Protection;
- 30 (2) Certified B Corp;
- 31 (3) Green America Certification;
- 32 (4) Green Seal;
- 33 (5) International Organization for Standardization ISO 14001
 34 certified; or
- 35 (6) any other third party validation approved by the Department.
- 36 (b) Payment of supplement. The Director of Finance must pay, subject to
 37 appropriation, a Green Organization Supplement to each applicant who
 38 meets certain eligibility standards.
- 39 (c) Eligibility standards. An applicant, who need not be a County resident,
 40 is eligible to receive the Supplement if the applicant:
- 41 (1) is a qualified investor; and
- 42 (2) invests in a qualified green organization that:
- 43 (A) has its headquarters and base of operations in the County;
 44 or
- 45 (B) has signed a lease to open a facility in the County and has
 46 been in business for less than 10 years and employs less
 47 than 50 people.
- 48 (d) Additional eligibility standards. The County Executive, by Method 2
 49 regulation, may impose other eligibility standards. However, those
 50 standards must not make any person ineligible to receive the
 51 Supplement who would be eligible under subsection (c).
- 52 (e) Ineligible investments. A qualified investor must not receive a
 53 supplement for capital used for any:
- 54 (1) geothermal, or solar photovoltaic, or similar system; or

- 55 (2) any building green or energy efficiency improvement,
- 56 (f) Amount of supplement. The Supplement paid to each recipient is a one-
57 time Supplement and must equal 50% of the recipient's investment in a
58 qualified green organization, or a lower percentage set in the annual
59 operating budget resolution, up to \$25,000.
- 60 (g) Application required. The Director must require each eligible person to
61 submit an application for the Supplement and may take any other action
62 necessary to administer the Supplement. The Executive may issue
63 regulations under Method (2) to specify an application process and
64 otherwise implement this Section.
- 65 (h) Fraudulent applications. A person who submits a false or fraudulent
66 application, or withholds material information, to obtain a payment
67 under this Section has committed a Class A violation. In addition, the
68 person must repay the County for all amounts improperly paid and all
69 accrued interest and penalties that would apply to those amounts as if
70 they were overdue taxes. A person who violates this Section is liable
71 for all court costs and expenses of the County in any civil action brought
72 by the County to recover any payment, interest, or penalty. The County
73 may collect any amount due, and otherwise enforce this Section, by any
74 appropriate legal action.

LEGISLATIVE REQUEST REPORT

Bill 40-12

Economic Development – Green Organization Supplement

DESCRIPTION: Authorizes the County to provide qualified applicants a Green Organization Supplement. The County supplement 50% of the recipient's investment in a qualified green organization, or a lower percentage set in the annual operating budget resolution, up to \$25,000.

PROBLEM: Need for further incentives to invest in local green technology companies

GOALS AND OBJECTIVES: To promote investment in local green technology companies

COORDINATION: Finance Department, Department of Economic Development

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Amanda Mihill, Legislative Attorney, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: Applies to companies anywhere in the County.

PENALTIES: Not applicable

Overview of the green economy in Montgomery County, MD

Montgomery County is laying the foundation for a new green economy, which will create, expand and attract businesses that provide environmentally sustainable products, green technologies and services. With its history of progressive policies, engaged residents and innovative entrepreneurs, Montgomery County can nurture its nascent green industries and transform its entire economy into one of the greenest and most successful in the region—and beyond.

This report documents the Montgomery County Green Economy Task Force's recommendations for growing a sustainable economy in the 21st century. It covers a variety of topics, including raising substantial capital for new green technologies, spurring innovation through competition, simplifying bureaucracy for green businesses and building a vibrant, local food system.

These are not small recommendations that can be done quickly by one department or agency. They involve new partnerships, substantial private investments, advocacy at multiple levels of government and a county-wide commitment to a new way of doing business. In some cases, the inspiration for these recommendations comes from other jurisdictions like Silicon Valley, Austin and Toronto who are leaders in sustainable development. The Task Force has examined these programs and tailored some of them to fit Montgomery County's strategic advantages.

Other jurisdictions have set ambitious goals for green job growth, including Vancouver, BC, which hopes to add 20,000 by 2020 and Silicon Valley, which aims to add 25,000 clean-tech jobs within 15 years.¹ The Task Force hopes and expects that if the recommendations are implemented, something of a similar nature might be achievable in Montgomery County.

But, in addition to new jobs, the Task Force recommends that the success of the green economy should not be determined by usual measures like tax receipts or new construction starts. Instead, leaders should analyze the County's triple bottom line. Evaluating success using a "triple bottom line" approach means that we no longer look only at financial health, but we are now obligated to consider economic prosperity, environmental quality and social justice equally, with each policy decision we make.

By implementing the recommendations outlined in this report, and committing to a triple bottom line approach for evaluation, the potential for Montgomery County's green economy is only limited by our researchers' and entrepreneurs' imaginations. The Task Force is confident that Montgomery County will become a green economic engine that supports profitable business ventures while contributing to a sustainable society.

Charge to the Green Economy Task Force

In early 2009, the County Executive commissioned the 29-member Green Economy Task Force for the purpose of charting "a bold new course for Montgomery County focused on creating opportunities for new and existing 'green' businesses, spurring innovation, increasing employment, and developing next generation technologies."

¹ "Vancouver 2020 – A Bright Green Future". David R. Boyd & The Greenest City Action Team. 2009

The Task Force was asked to build upon several strengths inherent in Montgomery County: 1) a successful track record in promoting the growth of the local biotech industry; 2) progressive environmental policies; and 3) existing environmental and economic development initiatives. Examples of key policies include green building legislation, which requires both privately-constructed buildings and new County-owned buildings to achieve certain LEED² standards, and the Home Energy Loan Program, a new financing mechanism that allows residents to make energy efficient home improvements that are repaid through property assessments. In addition to these policies, key initiatives like the Sustainability Working Group,³ and important partnerships with organizations like the Maryland Clean Energy Center,⁴ informed the Task Force's work.

The County Executive appointed Dick Wegman, an environmental attorney with broad experience in federal, state and local environmental issues, as the Task Force chairman. The Task Force deliberated for ten months to develop the recommendations outlined in this report. The schedule included six full Task Force meetings and dozens of smaller subcommittee meetings. The subcommittees were created to target broad categories of the green economy, including: Agriculture, Finance, Innovation, Land Use, Policy/Regulation, Promotion and Workforce. The Task Force's consultants, Sustainable Design Group, provided the subcommittees with topical background information including relevant green initiatives in other jurisdictions. Several of these programs are referenced in the final recommendations.

The purpose of this report is to provide the Leggett Administration with expert guidance and input regarding the investments, policies and strategic partnerships that will nurture Montgomery County's nascent green economy. The ultimate goal is to increase Montgomery County's triple bottom line by generating economic, environmental and social value for local businesses, residents and the region.

Lessons from our biotech history

Beginning a quarter of a century ago, Montgomery County embarked on a major biotechnology initiative designed to stimulate the local economy by taking advantage of its proximity to major national medical research facilities, including the National Institutes of Health, U.S. Army Walter Reed Medical Center, Bethesda Naval Medical Center and related entities such as the Food and Drug Administration. To convert these research assets into commercial opportunities, Montgomery County pursued the following initiatives:

- Purchased close to 300 acres for the world-renowned Shady Grove Life Sciences Center, whose land value today approximates \$150 million;

² The Leadership in Energy and Environmental Design (LEED) rating system is a third party certification program and the nationally accepted benchmark for high performance green buildings.

³ In January 2009, Montgomery County issued a ground-breaking Climate Protection Plan, prepared by the legislatively created Sustainability Working Group. The Sustainability Working Group's recommendations will create a demand for green companies, through green building laws, greenhouse gas reduction mandates and other quality of life recommendations.

⁴ The Maryland Clean Energy Center, headquartered at the Universities at Shady Grove, was created by the State legislature and the governor in 2008 to develop clean technology development and clean tech jobs in the state. The Center's mission is to provide a coordinated approach to building a strong, clean energy economy in Maryland through technology commercialization, business incubation and workforce development and training.

- Coordinated the donation of 85 acres of private land to the University of Maryland and The Johns Hopkins University for their academic campuses and for the Center for Advanced Research in Biotechnology (CARB);
- Infused over \$17 million in infrastructure for the Life Sciences Center and for Hopkins' Belward Campus;
- Constructed Hopkins' first academic building (a \$12 million capital outlay), and financed the construction of CARB;
- Developed a life sciences business incubation strategy, which began with the \$10 million Maryland Technology Development Center, and now includes a total of five incubators; and
- Advocated at the State level for major capital investments in the University of Maryland, Johns Hopkins and CARB by continually highlighting these assets in the County's state legislative priorities.

The deeper pockets of the state, through financing agencies like MEDCO and TEDCO, and the Sunny Day Fund, and the attraction of out of state venture capital, were also needed to grow companies such as MedImmune and Human Genome Sciences.

As a result of this 25 year effort, Montgomery County's biosciences industry now generates combined annual revenues of \$2.36 billion, employs more than 9,200 private sector employees, and is often ranked as one of the top ten biotechnology clusters in the nation.⁵

Strategic advantages for growing the green economy

The Green Economy Task Force believes that even though there are significant differences between the biotech industry and the green technology industry, by implementing certain strategies outlined in this report, the probability of growing a robust green economy in Montgomery County is quite high.

The County's innate strengths, which promoted the growth of biotech, will again be the bedrock for the new, green economy. These strengths include an engaged private sector, bold political leadership, proximity to federal agencies, partnerships with academia and a highly-educated workforce. For example, the local government has a history of progressive leadership, which has already made significant strides in terms of green policies and sustainability. A recent study by the National Association of Counties, entitled "Local Leaders in Sustainability," described Montgomery County as "a progressive leader on green building and sustainability. Montgomery County will certainly be a county to watch as recent legislation takes effect and local policymakers go to new and innovative lengths to promote green buildings in their communities."⁶

Additionally, Montgomery County has a highly engaged professional community. It has experience building public-private partnerships and facilitating communication and collaboration between citizens, government, industry, researchers and academia. These professionals include employees at several federal installations related to energy, climate change and other green economy issues,

⁵ Maryland-National Capital Park and Planning Commission (M-NCPPC).

⁶ NACO – Local Leaders in Sustainability – Green Counties. Brooks Rainwater & Cooper Martine.

including the National Institute of Standards and Technology, the National Oceanic and Atmospheric Administration, and the Department of Energy. Because of these federal partners, Montgomery County is particularly well positioned to take advantage of the new federal and state support for strategies that utilize sustainability as a driver of economic development. And, unlike the biotech experience, there are existing large corporations in the County that can provide sources of technology as well as generate demand for green goods and services. Local sustainability strategies will also serve as demand generators.

Presently, Montgomery County's companies and businesses benefit from access to a well-educated and highly skilled workforce of 500,000 people. Nearly 60 percent of the county's labor force holds a bachelor's degree and 34 percent have earned a graduate or professional degree⁷, making Montgomery County an advantageous location for new and expanding green businesses.

Finally, Montgomery County has over 93,000 acres of viable farmland, which includes 577 farms and 350 horticulture enterprises, producing \$251 million annually and employing 10,000 people.

Combined, these strategic advantages give us an opportunity to become a leading jurisdiction in the green economy.

Defining the green economy

The green economy means different things to different people. With respect to many of the recommendations contained in this report, regulators or county officials in carrying out their responsibilities may find the Governor's Workforce Investment Board (GWIB) definition helpful. The GWIB treats a company as "green" if it is "directly engaged in the development, manufacture, sale and distribution, installation, and application of products and services that promote energy security and/or protects our environment."⁸ However, this approach would not be appropriate for some of the other recommendations in this report. For example, the Task Force recommends encouraging the consumption of locally produced products and food; clearly, in this area, a different metric would be needed. In other instances, the construction or operation of a LEED-certified building may qualify as "green," and the GWIB test would not fit here either.

What is the same are the basic principles that underlie all of the recommendations in this report: (1) dependence on carbon-based sources of energy is rapidly becoming economically and environmentally unsustainable and (2) Montgomery County can play a major leadership role in finding new ways to meet these challenges. Thus, after considering whether a single definition of the green economy should be adopted, in the end the Task Force decided that a one-size-fits-all approach would not be useful.

⁷ Research & Technology Center – Montgomery County Planning Department.

⁸ www.midworkforce.com

Benchmarks

At this time, there is no national definition of what constitutes the “green economy,” so it is difficult to benchmark and monitor Montgomery County’s progress against other jurisdictions. For example, a contractor may build green homes, an HVAC contractor may specialize in energy efficient equipment, or an architect may design only LEED-rated buildings. However, common data sources like NAICS Codes are of limited use, because they don’t have a special green designation—every architect would fall under the same code. Similarly, there is no single source of data on the green industry within Montgomery County. For this report, the consultants used a variety of data sources, including industry associations serving specific technology sectors and consumer guides.

According to the consultants’ preliminary estimates, there are over 200 businesses in Montgomery County that contribute to the green economy. Montgomery County’s green industry can be divided into several categories: Energy Companies, Products and Services, Federal Installations, Finance and Venture Capital, and Private Green Technology R&D. Additionally, the Task Force acknowledges the importance of existing companies that are implementing sustainable business practices, regardless of their industry, because they create significant demand for local green products. The following are some examples of existing businesses and organizations already impacting Montgomery County’s green economy:

Energy Companies: Preliminary research shows 11 companies that provide energy-related products and services in Montgomery County (not counting energy auditors). One of the most successful companies is Standard Solar, Inc., which was started in 2004, and currently employs more than 60 people. Not only was Standard Solar involved in one of the east coast’s largest solar electric system installations for the US Department of Energy, the company was recently part of the region’s largest Power Purchase Agreements in Upper Marlboro, MD.

Green Products and Services: The available data indicates that the largest sector of green business in Montgomery County is green products/services. These services include everything from green cleaning companies to energy auditors and consultants. Additionally, there are an estimated 410 LEED Accredited Professionals working in Montgomery County. An example of a green product provider is Amicus Green Building Center, in Kensington, MD, which offers a range of green building products and supplies. In addition to providing green products, Amicus follows triple bottom line principles in its operations.

Federal Installations: There are three federal installations in Montgomery County whose work supports the advancement of green technology. For example, the National Institute of Standards and Technology (NIST), in Gaithersburg, is committed to studying and solving issues associated with a variety of green technology standards, including high performance buildings and sustainable infrastructure materials.

Finance and Venture Capital: Investors are an important component to a healthy green industry, because they help companies bring their technologies to market. Calvert Investments, an environmentally and socially responsible investment firm in Bethesda, manages \$14 billion in assets.

Private Green Technology R&D: Montgomery County is home to several large corporations that are diversifying their businesses to include green technology. One example is Lockheed Martin, the country’s largest defense contractor, which is now investing in smart grid R&D.

B-3) Encourage private investment in green technology through tax incentives

In order to promote investments in local green technology companies, Montgomery County should establish a local tax credit (against income, real or personal property taxes) for investors who invest in Montgomery County-based green tech companies.

Model Program:

The Maryland Biotechnology Investment Tax Credit provides income tax credits for investors in qualified Maryland biotechnology companies to offer incentives for investment in seed and early stage, privately held biotech companies. The value of the credit is equal to 50% of an eligible investment made in a qualified Maryland biotechnology company during the taxable year. The maximum amount of the credit cannot exceed \$250,000 for investors.

Strategic Advantages:

The State of Maryland has a proven track record of using investment tax credits to leverage private investment in early stage biotech companies. Montgomery County is currently developing its own biotechnology investment tax credit program, which will provide a model for a parallel green technology local tax credit program. Alternatively, a single biotech/clean tech investment tax credit program could be established through one piece of legislation/program.

Implementation:

1. Work with the Office of the County Executive, Department of Finance, Office of Management and Budget and Office of the County Attorney to draft legislation and a fiscal impact statement.
2. Enlist local biotech companies that have benefited from the MD biotech investment tax credit to educate decision makers on the potential direct and indirect benefits of the tax for the green sector.
3. Coordinate funding for the tax credit in appropriate fiscal year budget, and develop the necessary administrative procedures.

Resources and Financial Impacts:

Funds will need to be included in the County budget for the tax credit program (as a point of reference, FY10 funding for the MD Biotech Investment Tax Credit is \$6 million). Staff resources will be needed to develop the legislation and regulatory/administrative procedures, and to certify eligible investments and administer the tax credit program.

Partnerships:

- State Comptroller
- Tech Council of Maryland and chambers of commerce (for outreach on the program)
- Angel investors and VC funds

BILL 40-12



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ROCKVILLE, MARYLAND

071377

MEMORANDUM

January 18, 2013

TO: Nancy Navarro, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget *JAH*
Joseph F. Beach, Director, Department of Finance *JFB*

SUBJECT: Council Bill 40-12, Economic Development – Green Organization Supplements

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:a2a

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Joy Nurmi, Special Assistant to the County Executive
- Patrick Lacefield, Director, Public Information Office
- Joseph F. Beach, Director, Department of Finance
- Michael Coveyou, Department of Finance
- Steve Silverman, Director, Department of Economic Development
- Peter Bang, Department of Economic Development
- Helen Vallone, Office of Management and Budget
- Blaise DeFazio, Office of Management and Budget
- Ayo Apollon, Office of Management and Budget

RECEIVED

Fiscal Impact Statement
Bill 40-12, Economic Development - Green Organization Supplements

1. Legislative Summary.

Bill 40-12 would authorize the County to provide qualified applicants a Green Organization Supplement. The supplement must equal 50% of the recipients' investment in a qualified green organization, or a lower percentage set in the annual operating budget resolution, up to \$25,000.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The changes in the County revenue and expenditures cannot be determined at this time due to the unknown number of green organizations in the County, and the uncertainty of how many of those organizations have, and will be pursuing outside investment. Assuming that most of the green organizations are willing and able to receive outside funding, the following factors need to be evaluated to determine the expenditure:

- Bill 40-12 acknowledges the validation of organization as a green organization from five entity/institutions, the County DEP, Green America Certification, Green Seal, State of Maryland (B-Corps), and the ISO. Based on the preliminary internet search, the County has approximately 180 organizations designated as green organization by the first three entities, and unknown number of certified organizations from the last two entities. Since some organizations receive certification from multiple certifying entities, it is believed that the County has over 150 green organizations that meet the Bill's definition.
- The County administered the Biotech Tax Credit Supplement Program during FY12. Sixty-six investment transactions were awarded supplement payments totaling \$500,000. The mean (average) investment size was \$89,500 and the mode (most frequent) of the investment was \$50,000. The proposed Green Organization Supplement will be a similarly structured program, with the Supplement amount proposed to be 50% of the actual investment made to a qualified green organization, or a lower percentage set in the annual operating budget resolution up to \$25,000. Based on the Department of Economic Development's experience of administering the EDF program and the Biotech Tax Credit Supplement program, it is believed that \$50,000 is the minimum investment size deemed "worthy of investing" by individual investors and the smaller institutional investors. As such, if the Green Organization Supplement pays 50% of the actual investment, an assumption can be made that most of the Supplement payments will be for investments at or above \$50,000. Therefore, the typical Supplement payment will be \$25,000 (or at the maximum Supplement amount) per transaction; unless a lower percentage is set in the budget resolution.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Not available at this time due to the unknown variables listed in question 2.

4. **An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.**

Not applicable.

5. **Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

Unknown at this time.

6. **An estimate of the staff time needed to implement the regulation.**

Since the qualification of green organizations is done by a third party, the Department of Economic Development believes we can use its existing staff members to market the program and receive applications, with assistance from the Department of Finance for the Supplement payment processing.

7. **An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

8. **An estimate of costs when an additional appropriation is needed.**

Not applicable.

9. **A description of any variable that could affect revenue and cost estimates.**

It is believed that the macro market condition such as federal government's policy and incentive programs related to the alternative energy industry, and the public's willingness to embrace new green products/services will influence the overall number of green organizations and the investment activities to those organizations.

10. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

All revenue or expenditures are difficult to project at this time due to the variables described in question 2.

11. **If a bill is likely to have no fiscal impact, why that is the case.**

Not applicable.

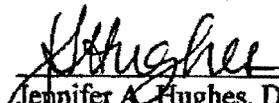
12. **Other fiscal impacts or comments.**

None.

13. **The following contributed to and concurred with this analysis.**

Peter Bang, Chief Operating Officer, Department of Economic Development

Helen Vallone, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

1/28/13
Date

Economic Impact Statement
Bill 40-12, Economic Development – Green Organization Supplements

Background:

This legislation would authorize the County to provide qualified applicants a Green Organization Supplement. The supplement must equal 50% of the recipients' investment in a qualified green organization, or a lower percentage set in the annual operating budget resolution, up to \$25,000.

1. The sources of information, assumptions, and methodologies used.

The Department of Economic Development researched the number of existing eligible businesses based on the certifications/validations permitted under the proposed legislation. Based on this research the County has approximately 180 organizations designated as green organization by the first three entities, and an indeterminate number of certified organizations from the last two entities. Since some organizations receive certification from a multiple certifying entities, it is estimated that the County has over 150 green organizations as defined in the subject legislation.

2. A description of any variable that could affect the economic impact estimates.

- The total amount of funding available each year for the supplements. While the legislation permits the supplements to be awarded to a potentially large number of businesses, the total amount that could be awarded is subject to annual budget appropriations.
- The number of businesses receiving the supplement each year.
- The availability of other investment, loan, or support programs at the federal or state level or the availability of private capital. The amount of the County support for the Green Organizations is only a supplement and other sources of capital would be necessary to initiate or support the expansion of these organizations.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

At an appropriate funding level, the subject legislation could potentially have a positive impact on the County's economic indicators. However, as mentioned in #2 above, there are some key variables that limit our ability to quantify with any certainty the impact on employment, spending, saving, investment, incomes, or property values. These variables include:

- the total amount appropriated for the Green Organization supplement each year;

Economic Impact Statement
Bill 40-12, Economic Development – Green Organization Supplements

- the type of businesses that receive the supplement (e.g. retail, service, manufacturing, etc). Investment in different types of businesses would have varying impacts on employment, spending, investment, and wages; and
- the extent to which the County's supplement would be critical to an enterprise's decision to initiate or expand its operations including hiring, leasing, purchasing, construction and other related activities.

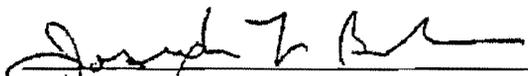
Based on the number of existing eligible businesses and assumptions of available funding the potential increased investment in Green Organizations is shown in the table below:

	Entities Receiving the Supplement	Assumed Maximum Investment	Total Annual Investment	County Funding Required
Existing Eligible Entities	150	\$ 50,000	\$ 7,500,000	\$ 3,750,000
With Expanded Business Formation	300	\$ 50,000	\$ 15,000,000	\$ 7,500,000

4. If a Bill is likely to have no economic impact, why is that the case?

Not Applicable. See #2 and #3.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance; Peter Bang, Department of Economic Development



 Joseph F. Beach, Director
 Department of Finance

1/15/13
 Date

Bill 40-12
Economic Development – Green Organization Supplement

Testimony of Steve Silverman, Director, Department of Economic
Development

Good afternoon. For the record, I am Steve Silverman, Director of Montgomery County's Department of Economic Development, and I am here, today, on behalf of County Executive Isiah Leggett, to testify in support of this legislation to support the growth of green businesses in Montgomery County.

In 2010, the County Executive received the Green Economy Task Force's report, which presented 19 recommendations to support the growth of the green industry cluster in our County.

Developed at the depth of the recession, the Task Force's mission was to uncover the local economic value embedded in solving the global environmental crisis.

In the Task Force's report, Recommendation B-3 states, "In order to promote investments in local green technology companies, Montgomery County should establish a local tax credit (against income, real or personal property

taxes) for investors who invest in Montgomery County-based green tech companies.”

We applaud Councilmember Berliner for proposing legislation that will encourage private capital investment in local green companies. We absolutely value local businesses that improve the sustainability of our everyday lives with environmentally sensitive products and services. We are similarly proud of companies that are committed to operating in a sustainable manner.

Behind their seemingly simple recommendation are hours of discussion about whether to advocate for investments in green businesses, generally, or to guide investors to our green technology companies. The phrase “green technology companies” was ultimately chosen because growing new companies that will create disruptive innovations and reshape the global market place should be our goal—both from an economic point of view and out of environmental necessity.

In light of this intent to be bold in our commitment to combating climate change while strengthening our economy, we recommend the following items for your consideration:

1) The proposed criteria could be tiered to reflect the magnitude of investments or the desires of investors. For example, it might make sense to increase the minimum amount of a qualified investment for green technology companies, or modify the percentage of investment that will be credited back to investors, or even to increase the maximum dollar amount that could be received. My office would be happy to work with you to determine dollar amounts that would have the most impact for our green economy. We suggest deploying this tiered approach as a pilot during the first few years, so that the results can be tracked and the criteria easily refined to meet the realities of investors' appetites.

2) To address the uncertainty surrounding the amount of money available for the Supplement each year, we propose a formula-based allocation process. To begin, an investor making a qualified investment during a calendar year would submit an application by January 31 of the following calendar year. (For example, if an investor invests in a local company in August of 2013, she would need to submit an application to the County payment by January 31, 2014.) Then, each qualified individual investment would be divided by the total amount of investments during that calendar year to derive the percentage of the annual

appropriation that is paid out. For example, if Investor A invests \$50,000 in a local green business, and qualified green business investments across the County totaled \$1M, then Investor A would get 5% of the appropriated Supplement fund.

The County would make payments to all qualified investors by August 31 of each calendar year. By working from a definitive number of investors and investment amount, the County can make more informed appropriations decisions.

In terms of the legislation, as it is written, today, we also recommend a number of clarifying amendments that we will submit to Council staff.

Circle 3:

Line 35(6) Clarify the "Department" as the Department of Environmental Protection.

Line 48-51 (d): Additional eligibility standards. We recommend rewording these lines to say, "The County Executive may adopt Method 2 regulations to implement this section."

Circle 4:

Line 55-59 (f) Amount of supplement. Replace the language with "The Supplement paid to each qualified investor is a one-time payment for up to 50% of the investment made to a Green Organization, or a lower percentage set in the annual budget resolution, up to a maximum of \$25,000."

Line 60 (g) Application required: Recommend defining the Director as the Director of the Department of Economic Development.

In early-stage investing, we sometimes hear that being first looks a lot like being wrong. We hope that incentive programs like the one, here, today will encourage investors to take the first step and become leaders in the growth of our green technology cluster. Thank you for the opportunity to testify today. We look forward to working with Council as it considers this bill.

(21)



DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett
County Executive

Steven A. Silverman
Director

MEMORANDUM

February 6, 2013

To: Nancy Floreen, Chair, PHED Committee
Montgomery County Council

From: Steve Silverman, Director 
Department of Economic Development

Subject: Recommended amendments to Bill 40-12, Economic Development - Green
Organization Supplement

I want to thank Councilman Berliner for introducing Bill 40-12, Economic Development - Green Organization Supplement on December 4, 2012 and holding a public hearing on the bill on January 22, 2013. Based on testimony provided at the public hearing and feedback I have received from my departments and green business owners, I am recommending a number of amendments to clarify the intent of the bill and the manner in which it would be implemented. The substantive changes are discussed below.

Name of the Program

I recommend that the name of the program be changed to "Green Investor Incentive Program" to clarify the purpose of this initiative, which is to encourage investments in local green companies (Line 2).

Definition of "Green Product or Service"

I recommend that we use a more deliberate definition of green products and services. The amended language is derived from the international "Organisation for Economic Co-operation and Development". The OECD definition is the foundation for many national and international green product and service related efforts (Lines 5-12).

Definition of "Qualified Green Company"

I recommend that the name "Green Organization" be changed to "Green Company" (Line 21).

Further, I recommend that the definition of "Qualified Green Company" be changed to mean any for-profit company that provides a green product or service and is verified as a sustainable operation by a third party (Lines 21-29).

The legislation's original inclusion of non-profits and co-ops conflicted with the intent of the Green Economy Task Force, whose goal was to enlarge the base of wealth-creating businesses while addressing environmental challenges. Donating to a non-profit or participating in a co-op is very different from investing in a for-profit enterprise, in which an investor assumes risk.

Therefore, I also recommend amended language, which clarifies that an investment is in return for stock or some other type of ownership interest (Lines 30-35).

Definition of "Qualified Investor"

I recommend increasing the minimum investment from \$5,000 to \$25,000. We know from the existing EDF and Biotech programs that \$50,000 is the most frequently invested amount. Based on conversations with local green entrepreneurs, the administrative costs of reviewing very small investment applications will outweigh the benefits to our companies. (Lines 36-39).

Additionally, I recommend clarifying that a qualified investor have limited ownership interest in the company and not derive financial benefit from the company. This will, for example, limit a business owner from receiving an incentive payment for investing in her own company (Lines 39-50).

Amount of incentive payment increased to \$50,000

Based on both conversations with entrepreneurs and our own data from the EDF and Biotech programs, the average investment in local companies is approximately \$90,000. As such, we should increase the maximum supplement amount to \$50,000 (Line 100).

Additionally, if we want to grow the number of investors who support local green companies, we should not limit investors to a "one-time" supplement (or "incentive payment" as proposed in the amendment). Instead, we should implement an annual limit that encourages individuals to keep investing in local companies in subsequent years (Lines 97-103).

Payment of Incentive & Appropriations

We propose a formula-based allocation process, where each qualified investment would be divided by the total amount of qualified investments during that calendar year to derive the percentage of the annual appropriation that is paid out (Lines 89-103).

This method will ensure that the County's appropriation amount, based on its unilateral decision and fiscal condition, will drive the Program, as opposed to the total amount of qualified investment dictating the appropriation requirement and leaving the County exposed.

Under this scenario, then, if an individual invests \$50,000 in a local green business, and qualified green business investments across the county totaled \$1M, then investor A would get 5% of the Program's appropriated amount.

Expedited Bill No. 40-12
Concerning: Economic Development -
Green **[[Organization Supplement]]**
Investor Incentive Program
Revised: 11/27/2012 Draft No. 2
Introduced: December 4, 2012
Enacted: June 4, 2014
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Berliner

AN ACT to:

- (1) authorize the County to provide qualified applicants a Green **[[Organization Supplement]]** Investor Incentive Payment; and
- (2) generally amend the law governing County financial incentives for investment in certain businesses.

By adding

Montgomery County Code
Chapter 20, Finance
Section 20-76C

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. Section 20-76C is inserted as follows:**

2 **20-76C. Green [Organization Supplement] Investor Incentive Program.**

3 (a) Definitions. In this Section, the following words have the meanings
4 indicated:

5 Green product or service means [[the delivery of a product or service in
6 the following areas:

- 7 (1) renewable, clean, or distributed energy;
8 (2) energy efficiency products or services;
9 (3) sustainable farming and food distribution;
10 (4) water quality and conservation;
11 (5) pollution reduction and remediation;
12 (6) recycling, reuse, and resource recovery; or
13 (7) biodiversity and natural resource conservation.]]

14 a product or service that measures, prevents, limits, minimizes, or
15 corrects environmental damage to water, air, or soil, as well as problems
16 related to waste, ecosystems, biodiversity, habitat or natural resource
17 depletion. All claims related to environmental attributes, as applicable,
18 for a product or service, must conform to guidelines published by the
19 Federal Trade Commission or other appropriate entity designated by the
20 Director of Environmental Protection.

21 Investment means the contribution of money in cash or cash equivalents
22 expressed in United States dollars, at a risk of loss, to a qualified green
23 company in exchange for stock, a partnership or membership interest, or
24 other ownership interest in the equity of the qualified green company,
25 title to which ownership interest vests in the qualified investor but does
26 not include debt.

27 Qualified green [[organization]] company means any [[business,
 28 cooperative, or non-profit]] entity of any form duly organized and
 29 existing under the laws of any jurisdiction for the purpose of conducting
 30 business for profit, excluding a sole proprietorship, that:

31 (1) [[provides a green product or service]] develops an innovative,
 32 new to the market, technology, or a unique combination of
 33 technologies, available only from that company, which adds
 34 significant value to a green product or service or is engaged in
 35 research or development of a such technology or technologies;
 36 and

37 (2) implements a sustainable operation as verified by a third party.

38 Qualified investor means any individual or entity that invests at least
 39 [[[\$5,000]] \$25,000 in a qualified [[Montgomery County]] green
 40 [[organization]] company and that is required to file an income tax
 41 return in any jurisdiction. Qualified investor does not include:

42 (1) a qualified pension plan, individual retirement account, or other
 43 qualified retirement plan under the Employee Retirement Income
 44 Security Act of 1974, as amended, or fiduciaries or custodians
 45 under such plans, or similar tax-favored plans or entities under
 46 the laws of other countries;

47 (2) an individual or entity that has an ownership interest in the
 48 qualified green company other than from a previous investment,
 49 which previous investment by itself or with the additional
 50 investment does not create a 25% or greater equity holding by the
 51 qualified investor in the qualified green company; or

(3) an individual or entity deriving any financial benefit, including salary or other compensation, from the qualified green company in which the qualified investor makes an investment.

Sustainable operation means an organization validated by a third party under one of the following:

- (1) Montgomery County [[Certified]] Green Business Certification Program, as certified by the Department of Environmental Protection;
- (2) [[Certified]] B Corp Certification from B Lab;
- (3) Green America Gold Certification;
- (4) Green Seal Certification;
- (5) International Organization for Standardization ISO 14001 [[certified]] Certification; or
- (6) any other third party validation approved by the Department of Environmental Protection.

(b) Incentive Payment [[of supplement]]. The Director of Finance must pay, subject to the amount of the annual appropriation in that fiscal year, [[a Green Organization Supplement]] an incentive payment to each [[applicant]] qualified investor who meets certain eligibility standards.

(c) Eligibility standards. [[An applicant]] A qualified investor, who need not be a County resident, is eligible to receive the [[Supplement]] incentive payment if the [[applicant]] qualified investor:

- [[(1) is a qualified investor; and
- (2)] invests in a qualified green [[organization]] company that:
- [[(A)] (1) has its headquarters and base of operations in the County; or

77 [(B)] (2) has signed a lease for at least 5 years to open a [facility]
 78 qualified green company with its headquarters and base of
 79 operations in the County; and

80 (3) has been in business for less than 10 years and employs less than
 81 50 people and does not have its securities publicly traded on any
 82 exchange.

83 (d) Additional eligibility standards. The County Executive, by Method 2
 84 regulation, may impose other eligibility standards. However, those
 85 standards must not make any person ineligible to receive the
 86 [[Supplement]] incentive payment who would be eligible under
 87 subsection (c).

88 (e) Ineligible investments. [[A qualified]] An investor must not receive [a
 89 supplement for capital] an incentive payment [[used]] for [[any]]:

90 (1) the installation of any geothermal, or solar photovoltaic, or
 91 similar system; or

92 (2) any building green or energy efficiency improvement.

93 (f) Amount of [[supplement]] incentive payment. The [[Supplement
 94 paid]] incentive payment made, subject to the amount of the annual
 95 appropriation in that fiscal year, to each [[recipient is a one-time
 96 Supplement and must equal 50% of the recipient's investment in a
 97 qualified green organization, or a lower percentage set in the annual
 98 operating budget resolution, up to \$25,000.]] qualified investor must
 99 equal the amount of the investment made by the qualified investor,
 100 divided by the total amount of investments made by all qualified
 101 investors in the same calendar year, multiplied by the total amount of
 102 funds appropriated for the green investor incentive program in that year.

103 The incentive payment made to any qualified investor in any single
 104 fiscal year must not exceed the lesser of:

105 (1) 50% of the investment made by the qualified investor in that
 106 fiscal year;

107 (2) 15% of the total annual and supplement appropriation for the
 108 green investor incentive program in that fiscal year; or

109 (3) \$50,000.

110 (g) In order to calculate the amount of the incentive payment to be made to
 111 a qualified investor under Subsection (f), the Director of the Department
 112 of Economic Development must, by January 15 of each calendar year,
 113 compile a list of each qualified investor making an investment in a
 114 qualified green company and the amount of that investment during the
 115 preceding calendar year. This list must be determined using the
 116 applications and any supporting documents qualified investors submit.
 117 The Director may take any other action necessary to administer the
 118 incentive payment. The Executive may issue regulations under Method
 119 (2) to implement this Section.

120 ~~[(g)]~~ (h) Application required. The Director of the Department of Economic
 121 Development must require each ~~[[eligible person]]~~ qualified investor to
 122 submit an application for the ~~[[Supplement]]~~ incentive payment and
 123 may take any other action necessary to administer the ~~[[Supplement]]~~
 124 incentive payment. The Executive may issue regulations under Method
 125 (2) to specify an application process and otherwise implement this
 126 Section.

127 ~~[(h)]~~ (i) Fraudulent applications. A person who submits a false or fraudulent
 128 application, or withholds material information, to obtain ~~[[a]]~~ an
 129 incentive payment under this Section has committed a Class A

130 violation. In addition, the person must repay the County for all amounts
 131 improperly paid and all accrued interest and penalties that would apply
 132 to those amounts as if they were overdue taxes. A person who violates
 133 this Section is liable for all court costs and expenses and reasonable
 134 attorney's fees of the County incurred in any civil action brought by the
 135 County to recover any payment, interest, or penalty. The County may
 136 collect any amount due, and otherwise enforce this Section, by any
 137 other appropriate legal action.

138 *Approved:*

139

140

Nancy Navarro, President, County Council

Date

141 *Approved:*

142

143

Isiah Leggett, County Executive

Date

144 *This is a correct copy of Council action.*

145

146

Linda M. Lauer, Clerk of the Council

Date



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 15, 2013

TO: Roger Berliner, Councilmember

FROM: Isiah Leggett, County Executive 

SUBJECT: FY14 Budget – Economic Development – Green Organization Supplement

Thank you for introducing Bill 40-12, Economic Development – Green Organization Supplement and for your ongoing leadership role in advocating for this program. As you well know, Bill 40-12 implements one of the recommendations of the Green Economy Task Force (Task Force) by creating a Green Organization Supplement that is similar to the County's Biotechnology Investment Incentive Tax Credit Supplement.

I established the Task Force in 2009 with your strong support in the midst of the recent recession. Its mission was to uncover the local economic value embedded in solving global environmental issues. In order to promote investments in local green technology companies, the final 2010 Task Force report recommended that the County establish a local tax credit program for individuals and entities that invest in County-based green technology companies. Bill 40-12 responds directly to this recommendation and I am grateful for your continued advocacy for creation of this program.

Given its significance to the local economy, I anticipate that Council will approve Bill 40-12 in the near future. To ensure that there is no delay in implementing the program, I am including \$500,000 for this program in my FY14 recommended operating budget. Thank you again for your strong leadership on this important issue. I look forward to working with you on this issue and many others as Council considers my recommended FY14 operating budget.

c: All County Councilmembers
Joseph Beach, Director, Finance Department
Marc Hansen, County Attorney
Bob Hoyt, Director, Department of Environmental Protection
Jennifer Hughes, Director, Office of Management and Budget
Steve Silverman, Director, Department of Economic Development