

**MEMORANDUM**

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*  
Josh Hamlin, Legislative Attorney *JH*

SUBJECT: **Worksession:** Bill 2-14, Environmental Sustainability – Buildings - Benchmarking

Bill 2-14, Environmental Sustainability – Buildings - Benchmarking, sponsored by Councilmembers Berliner, Floreen, Riemer, Andrews, and Navarro, was introduced on January 28, 2014. A public hearing was held by the Committee on February 11.

Bill 2-14 would require the owners of certain buildings to benchmark the energy use of certain buildings and retro-commission certain building systems to improve their energy efficiency. Modeled after laws in New York, Chicago, and the District of Columbia, Bill 2-14 would require building owners to measure the energy efficiency of their buildings, make that information public, and periodically commit to assuring that their energy efficiency equipment is working properly.

This Bill is designed to work with the recently enacted PACE program to create market-based incentives for building owners to increase the efficiency of their buildings. Information provided would aid tenants in forecasting future utility costs.

Councilmember Berliner explained the purpose of this Bill in his January 14 memorandum describing his proposed energy/environmental package (see ©20).

The Fiscal and Economic Impact statement for this Bill will be transmitted after March 17 (see ©24).

**Summary of Testimony**

The Council heard testimony and received correspondence from several people raising a variety of concerns. These include:

- Calvert Investments, Boland Trane Services, and the National Electrical Manufacturers Association supported Bill 2-14.

- The U.S. Green Building Council, Montgomery County Chapter, the Greater Bethesda-Chevy Chase Chamber of Commerce and Greater Silver Spring Chamber of Commerce, and others raised several concerns regarding the auditing and retro-commissioning portion of Bill 2-14, including the costs associated with an energy audit.
- The County Chamber of Commerce recommended that if the county requires benchmarking of private buildings, then the County should also participate in the program. The US Green Building Council, Montgomery County Chapter urged that benchmarking should first apply to County buildings and to private buildings after a successful program is implemented with County buildings.
- The County Chamber of Commerce recommended that for older buildings that are likely to be less efficient than newer buildings, the County provide a process to help with mitigation. Examples the Chamber mentioned include priority for County programs or other education to address efficiency problems.
- The Greater Bethesda-Chevy Chase and Greater Silver Spring Chambers of Commerce and Guardian Realty Management raised concerns about the disclosure requirement and questioned whether proprietary information would be protected.
- The Maryland National Capital Building Industry Association and Montgomery Housing Partnership supported the concept of encouraging and supporting efforts to benchmark the energy use of buildings, but urged the Council to establish a working group to identify ways to create, support, and measure building energy use.
- The Greater Bethesda-Chevy Chase and Greater Silver Spring Chambers of Commerce raised a variety of specific questions, including whether the waiver provisions are adequate, and what the costs are for benchmarking, energy audits, and retro-commissioning.
- The Maryland-National Capital Park and Planning Commission questioned whether benchmarking would be required for buildings that are scheduled to be demolished.

### **Department of Environmental Protection Comments**

The Department of Environmental Protection provided a helpful review of Bill 2-14 (©72). Included in their review are the following recommended amendments:

- delete the energy audit and retro-commissioning requirements;
- change the implementing department from Permitting Services to Environmental Protection;
- require benchmarking for County buildings before applying the law to private buildings;
- establish a work group to develop a Benchmarking Reporting Protocol for how the benchmarking process should work in the County;

The Department noted that additional resources would be required to implement the bill.

## **Councilmember Berliner amendments**

Councilmember Berliner intends to offer an amendment that would address several of the concerns raised in testimony and correspondence (©75). Councilmember Berliner's amendment would:

- delete the energy audit and retro-commissioning requirements;
- apply benchmarking only to nonresidential buildings;
- adjust the reporting timeframe so that benchmarking is required for County buildings beginning in June 2015, Group 1 covered buildings in December 2016 , and Group 2 covered buildings in December 2017;
- create a Benchmarking Work Group to review the implementation of the law as it is applied to County buildings and submit a report in September 2015 with any recommendations regarding how benchmarking should be implemented for privately-owned buildings, including any recommended amendments to County law.

## **Issues for Committee Discussion**

As noted above, many issues raised in testimony and correspondence are addressed in Councilmember Berliner's proposed amendment. The following issues remain:

***What County department should be the implementing department?*** As drafted, Bill 2-14 would be implemented and enforced by the Department of Permitting Services. DEP Comments recommend changing this to the Department of Environmental Protection

***Should benchmarking be required for buildings that are scheduled to be demolished?*** The Maryland-National Capital Park and Planning Commission recommends that a building that is scheduled to be demolished within 4 years be excluded from the benchmarking requirement. The Bill as drafted does not exclude these buildings.

***Should Bill 2-14 offer incentives for owners of less efficient buildings?*** The County Chamber of Commerce recommended that for older buildings that are likely to be less efficient than newer buildings, the County provide a process to help with mitigation. Examples the Chamber mentioned include priority for County programs or other education to address efficiency problems (©62). Council staff agrees that giving property owners information about potential programs to assist with increasing the efficiency of a building would be beneficial. Therefore, Council staff recommends Bill 2-14 be amended to require the Department to offer owners of covered buildings information about County programs that could assist in implementing energy efficiency improvements (such as the forthcoming Commercial Property Assessed Clean Energy program).

***What benchmarking information must be disclosed?*** Bill 2-14 requires the Department to make reported benchmarking information readily available to the public. Some Chambers of Commerce and Guardian Realty Management raised concerns about this requirement and questioned whether proprietary information would be protected. Council staff notes that this

section briefly restates portions of the State Public Information Act. To the extent that information reported is exempt from disclosure under State law, it would be withheld.

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Bill No. 2-14  
Concerning: Environmental Sustainability  
- Buildings - Benchmarking  
Revised: 1/16/2014 Draft No. 4  
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Sunset Date: \_\_\_\_\_  
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 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;
- (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) 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

<b>Boldface</b>	<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 Article 5, consisting of**  
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           *Covered building* means any Group 1 covered building or Group 2 covered  
21           building, as defined in this Article. *Covered building* does not include any  
22           building with more than 10% occupancy which is used for

23           (1) public assembly in a building without walls;

24           (2) warehousing;

25           (3) self storage; or

26           (4) a use classified as manufacturing and industrial or transportation,  
27           communication, and utilities.

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

31 Department means the Department of Permitting Services.

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

33 Energy performance score or ENERGY STAR score means the numerical  
34 score produced by the benchmarking tool, or any successor score, that  
35 assesses a building's energy performance compared to similar buildings,  
36 based on source energy use, operating characteristics, and geographic  
37 location.

38 Energy use intensity or EUI means a numeric value calculated by the  
39 benchmarking tool that represents the energy consumed by a building  
40 relative to its size.

41 Group 1 covered building means any building, or any group of buildings that  
42 have the same property identification number, that equals or exceeds  
43 250,000 square feet gross floor area, as identified by the Director.

44 Group 2 covered building means any building, or any group of buildings that  
45 have the same property identification number, that equals or exceeds 50,000  
46 square feet gross floor area but is less than 250,000 square feet gross floor  
47 area, as identified by the Director.

48 Gross floor area means the sum of the gross horizontal area of the several  
49 floors of a building or structure measured from the exterior faces of the  
50 exterior walls or from the center line of party walls. In a covered but  
51 unenclosed area, such as a set of gasoline pumps or a drive-through area,  
52 gross floor area means the covered area. Gross floor area does not include  
53 any:

54 (a) basement or attic area with a headroom less than 7 feet 6 inches;

55 (b) area devoted to unenclosed mechanical, heating, air conditioning, or  
 56 ventilating equipment;

57 (c) parking structure; or

58 (d) accessory structure to a residential building.

59 Licensed professional means a professional engineer or a registered architect  
 60 licensed in the State, or another trained individual as defined in applicable  
 61 County regulations.

62 Reported benchmarking information means the descriptive information  
 63 about a building, its operating characteristics, and information generated by  
 64 the benchmarking tool regarding the building's energy consumption and  
 65 efficiency. Reported benchmarking information includes the building  
 66 identification number, address, gross floor area, energy performance score,  
 67 energy use intensity, and annual greenhouse gas emissions.

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

70 **18A-39. Energy use benchmarking.**

71 (a) Group 1 covered buildings. No later than June 1, 2014, and every  
 72 June 1 thereafter, the owner of any Group 1 covered building must  
 73 benchmark the building for the previous calendar year. However, the  
 74 owner of any Group 1 covered building with at least 10% residential  
 75 occupancy, as measured by square footage, must benchmark the  
 76 building for the previous calendar year no later than June 1, 2015, and  
 77 no later than June 1st each year thereafter. The owner must report the  
 78 benchmarking information to the Department no later than July 1 each  
 79 year.

80 (b) Group 2 covered buildings. No later than June 1, 2015, and no later  
 81 than June 1st each year thereafter, the owner of any Group 2 covered

82 building must benchmark the building for the previous calendar year.  
 83 However, the owner of any Group 2 covered building with 10% or  
 84 more residential occupancy must benchmark the building for the  
 85 previous calendar year no later than June 1, 2016, and no later than  
 86 June 1st each year thereafter. The owner must report the  
 87 benchmarking information to the Department no later than July 1 each  
 88 year.

89 (c) Retention of information. The owner of any covered building must  
 90 retain all information tracked and input into the benchmarking tool for  
 91 at least three 3years after the date benchmarking was required.

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

95 (1) is in financial distress, defined as a building that:

96 (A) is the subject of a tax lien sale or public auction due to  
 97 property tax arrearages;

98 (B) is controlled by a court appointed receiver; or

99 (C) was recently acquired by a deed in lieu of foreclosure;

100 (2) had average physical occupancy of less than 50% throughout  
 101 the calendar year for which benchmarking is required; or

102 (3) is new construction and received its certificate of use and  
 103 occupancy during the calendar year for which benchmarking is  
 104 required.

105 **18A-40. Data Verification.**

106 (a) Verification required. Before the first benchmarking deadline  
 107 required by Section 18A-39, and before each third benchmarking  
 108 deadline thereafter, the owner of each covered building must assure

109 that reported benchmarking information for that year is verified by a  
 110 licensed professional. The verification must be a stamped and signed  
 111 statement by a licensed professional attesting to the accuracy of the  
 112 information. If the Director requests, the owner of a covered building  
 113 must produce the statement available for the most recent year in  
 114 which verification was required.

- 115 (b) Waiver. The Director may waive the requirements of this Section if  
 116 the owner shows that compliance with this Section will cause undue  
 117 financial hardship. If a no-cost or low-cost verification option is  
 118 available, the Director may require the owner to use the alternative  
 119 option.

120 **18A-41. Solicitation of compliance information from tenants.**

- 121 (a) Solicitation of information from tenant. An owner of a covered  
 122 building must request relevant information from any tenant in a  
 123 covered building no later than March 1 of each year in which  
 124 benchmarking is required by Section 18A-39. If the owner receives  
 125 notice that a tenant intends to vacate a unit which is subject to this  
 126 Section, the owner must request the information within 10 days after  
 127 receiving the notice to vacate.

- 128 (b) Tenant response. Within 30 days after receiving a request for  
 129 information from the building owner, each tenant of a unit in a  
 130 covered building must provide the building owner with all  
 131 information that the owner cannot otherwise acquire that is necessary  
 132 to comply with this Article.

- 133 (c) Failure of tenant to provide information.

- 134 (1) If any tenant does not provide the information required under  
 135 this Section to the owner of a covered building, that fact does

136 not relieve the owner of the obligation to benchmark the  
 137 building under Section 18A-39, using all information otherwise  
 138 available to the owner.

139 (2) If a tenant of a unit in a covered building does not provide  
 140 information to the owner of the building under this Section, the  
 141 Director must consider the owner to be in compliance with  
 142 Section 18A-39 if:

143 (A) the owner shows that the owner requested the tenant to  
 144 provide the information under this Section; and

145 (B) the owner benchmarked the building under Section 18A-  
 146 39, using all information otherwise available to the  
 147 owner.

148 **18A-42. Annual report; disclosure of benchmarking information.**

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

153 (1) summary statistics on the most recent reported energy  
 154 benchmarking information; and

155 (2) discussion of any energy efficiency trends, cost savings, and job  
 156 creation resulting from energy efficiency improvements.

157 (b) Disclosure of benchmarking information. The Director must make  
 158 reported benchmarking information readily available to the public to  
 159 the extent allowed under state law.

160 (c) Exceptions to disclosure. To the extent allowable under state law, the  
 161 Director must not make the following readily available to the public:

- 162           (1) any individually-attributable reported benchmarking  
 163           information from the first calendar year that a covered building  
 164           is required to benchmark; and
- 165           (2) any individually-attributable reported benchmarking  
 166           information relating to a covered building that contains a data  
 167           center, television studio, or trading floor that together exceeds  
 168           10% of the gross square footage of the individual building until  
 169           the Director finds that the benchmarking tool can make  
 170           adequate adjustments for these facilities. When the Director  
 171           finds that the benchmarking tool can make adequate  
 172           adjustments, the Director must report this data in the annual  
 173           report.

174 **18A-43. Regulations; penalties.**

- 175           (a) The County Executive may issue Method (2) regulations to administer  
 176           this Article.
- 177           (b) Any violation of this Article is a Class A violation.

178 **Article 7. Energy Audits and Retro-Commissioning of Base Building Systems.**

179 **18A-44. Definitions.**

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

181 ASHRAE means the American Society of Heating, Refrigerating and Air-  
 182 conditioning Engineers, Inc.

183 Base building system means each system or subsystem of a building that  
 184 uses energy or impacts energy consumption, including:

- 185           (1) the building envelope;
- 186           (2) any heating, ventilating, and air conditioning (HVAC) system;
- 187           (3) any conveying system;
- 188           (4) any domestic hot water system; and

189 (5) any electrical or lighting system.

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

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

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

202 Covered building means

- 203 (1) 1 building that exceeds 50,000 gross square feet;  
 204 (2) 2 or more buildings on the same tax identification number that  
 205 together exceed 100,000 gross square feet; or  
 206 (3) 2 or more buildings held in the condominium form of ownership that  
 207 are governed by the same board of managers and that together exceed  
 208 100,000 gross square feet.

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

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

214 Department means the Department of Environmental Protection.

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

216 Energy audit or audit means a systematic process to identify and develop  
217 improvements to any base building system, including any alteration of that  
218 system and the installation of new equipment, insulation, or other generally  
219 recognized energy efficiency technology to optimize energy performance of  
220 the building and achieve energy savings.

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

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

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

228 Financial hardship of a building means a building that:

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

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

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

240 Owner means:

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

242 (2) the net lessee in the case of a net lease of an entire building for a term  
 243 of 49 years or more, including any renewal option;

244 (3) the board of directors or similar body if the covered building is a  
 245 cooperative apartment or condominium corporation.

246 Registered design professional has the meaning in the latest version of the  
 247 ICC International Building Code or another building code that the County  
 248 adopts.

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

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

256 Space means an area in a building enclosed by floor to ceiling walls,  
 257 partitions, windows and doors.

258 **18A-45. Energy audits required.**

259 (a) Audit required. The owner must assure that an energy audit is  
 260 performed on the base building systems of a covered building before  
 261 filing an energy efficiency report required by this Article. Except as  
 262 otherwise provided in Section 18A-49, an energy audit must be  
 263 performed by or under the supervision of an energy auditor and must  
 264 be performed in accordance with applicable regulations. The audit  
 265 process must cover the base building system and must at least  
 266 identify:

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

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

- 296 (e) Compliance with landmarks laws. The cost estimates for any covered  
297 building that is regulated by any state or federal law regulating  
298 landmarks or historic buildings must include all added costs necessary  
299 for the proposed work to comply with that law.
- 300 (f) Timing of energy audit. Except as otherwise provided in Section 18A-  
301 49, the energy audit must be completed no earlier than 4 years before  
302 the date when a covered building's energy efficiency report is filed  
303 under this Article.
- 304 (g) Exceptions. An energy audit is not required if a registered design  
305 professional certifies that the building complies with any of the  
306 following requirements:
- 307 (1) The covered building received an EPA Energy Star label for at  
308 least 2 of the 3 years before the building's energy efficiency  
309 report is filed.
- 310 (2) No EPA Energy Star rating is available for the building type,  
311 and a registered design professional documents that the  
312 building's energy performance is 25 or more points better than  
313 the performance of an average building of its type over a 2-year  
314 period during the 3 years before an energy efficiency report is  
315 filed, consistent with the methodology of the Leadership in  
316 Energy and Environmental Design 2009 rating system for  
317 Existing Buildings published by the United States Green  
318 Building Council or other rating system or methodology for  
319 existing buildings, as determined by the Department.
- 320 (3) The covered building received certification under the LEED  
321 2009 rating system for Existing Buildings, or another rating  
322 system for existing buildings the Director finds equivalent,

323                   within 4 years before the building's energy efficiency report is  
 324                   filed.

325    **18A-46.    Retro-commissioning required.**

326           (a)   Retro-commissioning required. The owner of a covered building must  
 327           assure that retro-commissioning is performed on the base building  
 328           system of a covered building before filing an energy efficiency report  
 329           as required by this Article. Except as otherwise provided in Section  
 330           18A-49, retro-commissioning must be performed by or under the  
 331           supervision of a retro-commissioning agent, as required by applicable  
 332           regulations issued under subsection (b).

333           (b)   Regulations. The County Executive must issue regulations requiring  
 334           that sufficient analysis, corrections and testing have been done so that  
 335           each base building system demonstrates efficient operation.

336           (c)   Contents of retro-commissioning report. The retro-commissioning  
 337           agent must prepare and certify a retro-commissioning report. Each  
 338           retro-commissioning report must include information relating to the  
 339           retro-commissioning as specified in applicable regulations.

340           (d)   Timing of retro-commissioning Except as otherwise provided in  
 341           Section 18A-49, each retro-commissioning must be completed no  
 342           earlier than 4 years before a covered building's energy efficiency  
 343           report is filed with the Department under this Article.

344           (e)   Documentation of retro-commissioning. The owner must maintain a  
 345           copy of the latest up-to-date equipment manual and the most recent  
 346           retro-commissioning report at every covered building and must make  
 347           either available to the Department for inspection on request.

348           (f)   Exceptions. A retro-commissioning is not required if the covered  
 349           building received certification under the LEED 2009 rating system for

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

355 **18A-47. Energy efficiency report required.**

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

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

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

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

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

372

<u>Last digit of property ID number</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>Year first EER is due</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>

373 (d) Deferral of energy efficiency report. An owner of a covered building  
 374 may defer submitting an energy efficiency report for a covered  
 375 building until the tenth year after the year identified in subsection (c)  
 376 if the building:

- 377 (1) is less than 10 years old at the beginning of its first assigned  
 378 calendar year; or
- 379 (2) has undergone substantial rehabilitation, as certified by a  
 380 registered design professional, within 10 years before the  
 381 calendar year when an energy efficiency report is due, if at the  
 382 beginning of the calendar year the base building systems of the  
 383 building comply with County law in effect for new buildings  
 384 constructed on and after July 1, 2010 or in effect on the date of  
 385 the substantial rehabilitation, whichever is later.

386 (e) Exceptions.

387 (1) The Director may allow an extension of time to file an energy  
 388 efficiency report if the building's owner shows that, despite the  
 389 owner's good faith efforts, the owner could not complete the

390 required energy audit and retro-commissioning before the due  
 391 date for the report. The Director may allow no more than 2  
 392 extensions of no more than one year each. Any extension  
 393 allowed under this Section must not extend the scheduled due  
 394 dates for any later energy efficiency report.

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

398 (f) Due dates for County buildings. The first due dates for County  
 399 buildings must follow a staggered schedule, from calendar year 2015  
 400 through calendar year 2023, for each building in use on July 1, 2014.  
 401 The Director must add each County building opened to use after that  
 402 date to the schedule within 10 years after the Department of  
 403 Permitting Services issues the certificate of use and occupancy for the  
 404 building.

405 (g) Combined audit and retro-commissioning. An owner may perform  
 406 the audit and retro-commissioning of a building in a combined process  
 407 if that process meets all requirements of Sections 18A-45 and 18A-46.

408 **18A-48. Notice.**

409 The Department must notify the owner of each covered building of the  
 410 requirements of this Article no later than 3 years before the calendar year when the  
 411 covered building's energy efficiency report is due and in the calendar year before  
 412 the calendar year when the report is due.

413 **18A-49. Early compliance.**

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

416 **18A-50. Regulations; penalties.**

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

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

420 *Approved:*

421

422

---

423 Craig L. Rice, President, County Council Date

424 *Approved:*

425

426

---

427 Isiah Leggett, County Executive Date

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

429

430

---

431 Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

Bill 2-14

### *Environmental Sustainability – Buildings - Benchmarking*

<b>DESCRIPTION:</b>	Would require the owners of certain buildings to benchmark the energy use of certain buildings and retro-commission certain building systems to improve their energy efficiency. Modeled after laws in New York, Chicago, and the District of Columbia, would require building owners to measure the energy efficiency of their buildings, make that information public, and periodically commit to ensuring that their energy efficiency equipment is working properly. This Bill is designed to work with the recently enacted PACE program to create market based incentives for building owners to increase the efficiency of their buildings. Information provided would aid tenants in forecasting future utility costs.
<b>PROBLEM:</b>	Insufficient attention is often paid to the energy efficiency of existing commercial buildings.
<b>GOALS AND OBJECTIVES:</b>	To improve the energy efficiency of existing and future commercial buildings.
<b>COORDINATION:</b>	Department of Environmental Protection, Department of Permitting Services
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Amanda Mihill, 240-777-7815
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Class A.



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

ROGER BERLINER  
COUNCILMEMBER  
DISTRICT 1

CHAIRMAN  
TRANSPORTATION, INFRASTRUCTURE  
ENERGY & ENVIRONMENT COMMITTEE

January 14, 2014

Dear Colleagues,

Next week I will be introducing a package of 13 energy/environmental measures that are designed to ensure that Montgomery County remains at the sustainability forefront. I would be pleased to have you cosponsor some or all of these measures.

These measures focus on renewable energy, energy efficiency, transportation, and government accountability. I have attached a fact sheet that gives a brief description of each of them, and of course would be happy to discuss any of them in greater detail should you have questions.

I was inspired by our Council's decision to assert its leadership in the context of reducing the gap in income disparities by passing a local minimum wage law. I think all of us appreciate that the federal government has become so dysfunctional that we can expect little progress on many of the issues we care deeply about. Indeed, Bruce Katz of Brookings recently described the federal government as a "large health insurance company with an army." His thesis, which I share, is that our governing paradigm has shifted from a top down led by the federal government to a bottom up led by local governments like ours.

I say all of this because we need to do more if we are to address climate change. It is obviously not a hoax and we know what we need to do to address it. We need to use less energy and cleaner energy. Period. This package of bills is taken in many instances from what other leading jurisdictions are doing – from Chicago to Seattle to California and New York states. They are a mix of leading by example, rewarding green businesses, supporting market forces, adopting more exacting standards, and holding our county government accountability.

Holding ourselves accountable is important. When the Council passed a similar package in 2008, we tasked a Sustainability Working Group with the principle responsibility for guiding our County to achieve our formal goal of reducing greenhouse gas emissions by 80 percent by 2050. It is time now to make this a core government

STELLA B. WERNER OFFICE BUILDING • 100 MARYLAND AVENUE, 6<sup>TH</sup> FLOOR, ROCKVILLE, MARYLAND 20850  
240-777-7828 OR 240-777-7900, TTY 240-777-7914, FAX 240-777-7989  
WWW.MONTGOMERYCOUNTYMD.GOV

responsibility, and this package includes a measure that will create an Office of Sustainability within DEP whose principal responsibility will be to monitor how we are doing and to help develop the policies and practices that will get us to where we need to be.

I hope you will join me in making sure Montgomery County burnishes its reputation as a community that embraces sustainability at our core.

Sincerely,

A handwritten signature in black ink, appearing to be the initials 'B.B.' followed by a horizontal flourish.

**FACT SHEET ON  
COUNCILMEMBER BERLINER'S 13 ENERGY/ENVIRONMENT LEGISLATIVE INITIATIVES**

Councilmember Roger Berliner (D-1), Chair of the Montgomery County Transportation, Infrastructure, Energy & Environment Committee, will be introducing 13 energy/environmental measures on January 21. The measures are designed to underscore and support the County's commitment to sustainability and would (1) promote increased energy efficiency; (2) increase use of renewable energy; (3) decrease consumption of gasoline and support electric vehicles; and (4) create more accountability and responsibility within County government for achieving the County's goal of reducing greenhouse gas emissions 80% by 2050. Below is a brief description of each of these measures:

**Renewable Energy**

- Renewable Energy Purchasing --50% Renewables by 2015; 100% by 2020 -- Today the County purchases approximately 30% of its energy from renewable energy resources. Washington, DC; Austin, Texas; and Portland, Oregon are already at 100% renewable energy.
- Renewables Onsite -- This bill, modeled after a recently passed law in Prince George's County, would require new or extensively remodeled county buildings, to generate at least 1 kilowatt of renewable energy for every 1,000 square feet of floor area.
- Greentaping Solar -- Two of the impediments to increased solar utilization are the cost and time involved in getting permits. This measure, patterned after a successful program in Chicago, requires our Department of Permitting Services to devise an expedited and less costly process for solar related permits.
- Solar Zoning Accommodation-- Current set back requirements limit the use of solar in residential dwellings. This ZTA would modestly amend our zoning laws to permit solar to extend 2 feet into the side or rear setback.

**Energy Efficiency**

- Benchmarking Buildings -- This legislation, modeled after laws in New York, Chicago, and the District of Columbia, would require building owners to measure the energy efficiency of their buildings, make that information public, and periodically commit to ensuring that their energy efficiency equipment is working properly. It is designed to work with the recently passed PACE program to create market based incentives for building owners to increase the efficiency of their buildings. Information provided would aid tenants in forecasting future utility costs.
- Silver LEED for New Buildings -- Current county law requires new commercial buildings to be LEED certified, while county buildings must meet the more environmentally stringent Silver standard. This bill would require all new commercial buildings to meet Silver LEED.

- Cost of Carbon -- The use of conventional fuels, particularly coal, extracts a cost on society that is not reflected in its price. These "external" costs should be factored into the cost/benefit calculations that the county utilizes when it assesses the potential for energy efficiency improvements. This bill would require the County to use EPA's "social cost of carbon" calculation or a comparable methodology for those purposes.
- LED Street Lighting -- It is generally recognized that LED lighting is far more energy efficient and requires far less maintenance. This bill would require DOT, upon the expiration of its current contract for street lighting, to contract with an LED company.

### Transportation

- EV Infrastructure – Electric Vehicles will only become mainstream when there are sufficient charging stations to inspire confidence in the public. California recently passed legislation requiring all new buildings over a certain size to be "EV ready." This ZTA would require all new buildings to install 1 EV charging station for every 50 parking spaces.
- Greentaping EV stations – Just as in solar installations, EV charging stations can be subject to a lengthy and costly permitting process. This bill would require DPS to institute an expedited and less costly permitting process.
- Teleworking -- Teleworking is becoming far more common and accepted. Other jurisdictions, including Fairfax, have made significantly more progress in establishing teleworking goals and meeting them. This legislation would require the County Executive to publish regulations that set forth a definitive teleworking policy and a requirement to designate a telecommuting manager.

### Government Incentives & Accountability

- Create an Office of Sustainability within DEP – This bill would create a new Office of Sustainability within DEP. When the Council passed legislation in 2008, it tasked a Sustainability Working Group with the responsibility of guiding our County's greenhouse gas reduction implementation. It is now time to make this a fundamental responsibility of the county government and to hold ourselves accountable.
- County Green Certified Businesses – The County has created a program whereby a local business can be "green certified" by adopting good sustainable practices. This bill calls upon the County Executive to issue regulations that would give a preference in contracting to local businesses that are green certified.



ROCKVILLE, MARYLAND

MEMORANDUM

February 5, 2014

TO: Craig Rice, President, County Council

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

SUBJECTS: Bill 2-14, Environmental Sustainability – Buildings – Benchmarking  
Bill 3-14, Buildings – Energy Efficiency – Energy Standards  
Bill 4-14, Street and Roads – County Street Lights  
Bill 5-14, Environmental Sustainability – Social Cost of Carbon Assessments  
Bill 6-14, Environmental Sustainability - Office of Sustainability – Established  
Bill 7-14, Contracts and Procurement – Certified Green Business Program  
Bill 8-14, Buildings – County Buildings – Clean Energy Renewable Technology  
Bill 9-14, Environmental Sustainability – Renewable Energy – County Purchase  
Bill 10-14, Buildings – Solar Permits – Expedited Review  
Bill 11-14, Buildings – Electric Vehicle Charging Station Permits – Expedited Review

As required by Section 2-81A of the County Code, we are informing you that transmittal of the fiscal and economic impact statements for the above referenced legislation will be delayed because more time is needed to coordinate with the affected departments, collect information, and complete our analysis of the fiscal and economic impacts. While we are not able to conduct the required detailed analyses at this time, it is clear that a number of these bills could have significant fiscal impacts.

Due to this year's heavy workload on Executive branch staff in developing both a full capital budget and an operating budget, the fiscal and economic statements will be transmitted after March 17, 2014.

JAH:fz

cc: Bonnie Kirkland, 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  
Marc P. Hansen, Office of the County Attorney  
Robert Hagedoorn, Department of Finance  
David Platt, Department of Finance  
Alex Espinosa, Office of Management and Budget  
Mary Beck, Office of Management and Budget  
Naem Mia, Office of Management and Budget  
Felicia Zhang, Office of Management and Budget

# TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT

## ON ENVIRONMENTAL AND SUSTAINABILITY PACKAGE

Bills 2-14, 3-14, 4-14, 5-14, 6-14, 7-14, 8-14, 9-14, 10-14, 11-14, 12-14

February 11, 2014

Good evening Council President Rice and members of the County Council. My name is Bonnie Kirkland and I am pleased to be here on behalf of County Executive Isiah Leggett to testify on the package of environmental and sustainability measures introduced on February 4, 2014 by Councilmember Berliner and others. Mr. Leggett supports Councilmember Berliner's initiative and the Council's efforts to address the need for more sustainable development in Montgomery County. Following up on recommendations from the Sustainability Workgroup, this package of renewable energy, energy efficiency and sustainability measures will take the County to the next level of environmental excellence.

Sustainable development has been defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.<sup>1</sup> The path forward requires understanding and planning: understanding how existing buildings perform and how planned buildings are expected to perform; and designing buildings and other infrastructure that reduce materials consumption, reuse materials, reduce energy consumption and maximize the use of renewable resources.

County Executive Leggett recognizes that the path forward will involve substantial change and commitment on the part of both the public sector and the private sector. He is committed to working with the Council on this package during the coming weeks to develop the most progressive and reasonable legislation achievable that will balance both the compelling need to achieve sustainable development and the budgetary realities faced by the County and our local businesses to fully implement the approved changes the legislative package requires.

Stewardship for future generations has been a cornerstone of Mr. Leggett's Smart Growth Initiative in terms of planning for future growth at appropriate transit oriented locations. The County Executive applauds Councilmember Berliner's and the sponsoring council members' vision and recognition of the need for stewardship of our precious resources for future generations.

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<sup>1</sup> International Institute for Sustainable Development quoting from the World Commission on Environment and Development (WCED). *Our common future*. Oxford: Oxford University Press, 1987 p. 43.

# AIA Potomac Valley

A Chapter of the American Institute of Architects

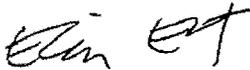
Date: February 11, 2014  
To: Roger Berliner, Nancy Floreen, Hans Reimer  
Montgomery County Council, Transportation and Energy Committee Members  
From: American Institute of Architects, Potomac Valley Chapter  
Subject: February 11, 2014, Public Hearing on Proposed Environmental and Energy Bills

The local American Institute of Architects, Potomac Valley Chapter (AIA-PV) is writing to provide comment on proposed environmental, sustainability, green building and energy legislation that is summarized in Attachment A.

Throughout 2013, the AIA-PV has been working to assist the Department of Permitting Services by providing multi-disciplinary expert review and comment on green building codes that the county is considering adopting. We have submitted detailed comments to the Department and urged them to proceed slowly and cautiously in order to give design professionals, builders, and owners time to acclimate to the requirements, especially criteria that have the potential to slow economic development in the county. We advise you to do the same before moving forward to adopt new or revised environmental and energy legislation.

In addition, we advise you to seek green building **code solutions** that are effective industry-standard tools to achieve your goals and avoid regulations that make development more time consuming and confusing.

Sincerely,



Eileen Emmet, AIA, IgCC Task Force Co-Chair, [eemmet.aia@gmail.com](mailto:eemmet.aia@gmail.com)  
William (Bill) LeRoy, AIA, IgCC Task Force Co-Chair, [w170@icloud.com](mailto:w170@icloud.com)

cc:  
Loreen Arnold, AIA-PV President 2014, [larnold@ktgy.com](mailto:larnold@ktgy.com)  
Scott Knudson, AIA; AIA-PV Past-President 2013, [sdqknudson@gmail.com](mailto:sdqknudson@gmail.com)  
Ralph Bennett, AIA-PV, IgCC Task Force, [ralph@bfmarch.com](mailto:ralph@bfmarch.com)  
Dan Coffey, AIA-PV, IgCC Task Force, [dcoffey@therrienwaddell.com](mailto:dcoffey@therrienwaddell.com)

Attachment A: AIA-PV July 30, 2013 IgCC Executive Summary  
Attachment B: AIA-PV Feb. 4, 2014 Letter to Diane Schwartz-Jones w/AIA-PV Executive Summary  
7.30.2013

## 2-14: Benchmarking

Benchmarking typically means a baseline against which performance is measured. Reporting for a year is required here (reasonable given seasonal variation) using Portfolio Manager (appropriate), but continuing energy reporting is inevitable and could be addressed by the legislation.

## 3-14: Building Energy Efficiency - Countywide

The County adopted the International Energy Conservation Code in 2013. This proposal refers to other energy codes included in LEED, and its impact should be assessed. Assumedly, the law intends to include LEED v.3; it should specify since v.4 is more stringent. LEED addresses many more issues than energy; if energy is the concern, it may be better to use energy codes.

## 4-14: County Street Lights

The assumed purpose is to reduce energy costs while maintaining appropriate lighting levels. LEED may not be, and is not the only answer here. So energy performance of possible alternatives should be addressed.

## 5-14: Social Costs of Carbon

Good intention - Many sectors of the economy exist only by shedding externality costs onto others. This also addresses the equity leg of the three-legged stool of sustainability.

Metrics here are new, unevenly available, and contentious. As long as the measurements are for information and not used to penalize or qualify projects, this may be a useful window into real sustainability.

## 6-14: Office of Sustainability

Parallels such agencies elsewhere - their success should be studied before full commitment. Full inclusion of appropriate agencies should be mandated - turf wars are inherent in the placement of such an agency within DEP. Implementation expertise is in permitting. Consider attaching to the Executive.

## 7-14: Certified Green Business Program

Which Certification will DEP use? Without this, it is difficult to know what the impact will be. The procedures included for selection of a system or systems will take a year, at least.

## 8-14: County Buildings, Renewable Energy Technology

This assumes that all county buildings can feasibly provide 1kw/1000 sf by photovoltaic generation. This may not be feasible for all buildings - offsets and other on-site energy technologies should be permitted including ground source heat pumps which LEED does not recognize as on-site energy. Renewable Energy Credits be clarified in lieu of 'Offsets.'

## 9-14: Renewable Energy Purchase: 50% by next year; 100% by 2020

Assumedly, this addresses County government's energy use. Will this extend to quasi-government agencies like HOC? Do they know about this?

## 10-14: Expedited Review of Solar Permits; 50% permit fee reduction.

Good idea.

## 11-14: Electric Vehicle Charging Station Permits; 50% permit fee reduction

Good idea.

## 12-14: County Employee Telecommuting

Good idea.

**EXECUTIVE SUMMARY**

**AIA-PV IgCC Task Force**

July 30, 2013

**Start Small:**

There are many reasons to start small and expand with subsequent revision cycles. This allows time for the industry to come to grips with the new requirements of green codes. It also allows the opportunity to gather real data on the costs and benefits of its implementation.

Montgomery County has diverse building types in urban, suburban and rural settings therefore allowing alternative compliance paths is helpful and necessary to address these varying conditions.

One method for a phased approach is to make compliance optional and create incentives for complying with the code. Incentives can take the form of tax breaks, expedited permitting, or reduced permitting fees.

Another method is to make the most demanding requirements electives and specify a minimum number required. This also provides the opportunity to collect real world data. There is still skepticism about the business model for green building and energy efficient operational directives. Carefully crafted electives and pilot studies can help address that issue. This is the approach taken in the PV-Task Force's detailed recommendations in Attachment B.

**Administrative Provisions:**

The manner in which the DPS will manage review of projects under the green code is critical to its success. The PV-TF recommends that the DPS create standard forms, templates, and electronic submission protocols and have them in place on the date of adoption in order to administer the requirements in an efficient and effective manner. The requirements of the code also indicate a need for additional DPS review staff to avoid lengthening already long review times. DPS staff will need to be educated and fluent in the code criteria of several compliance paths because alternative compliance paths will have the best chance of a successful implementation process.

**Jurisdictional Requirements:**

Chapter 3 Jurisdictional Requirement 301.1.1, Scope Application: The task force recommends retaining the option of IgCC or ASHRAE 189.1 compliance paths, thus retaining maximum flexibility for the design team to choose the compliance path applicable to the building type and location. The task force further recommends that LEED Silver should be allowed as an alternative, non-mandatory, compliance path, because it has an established format, method of compliance, and documentation templates.

**Electives:**

Table 302.1, Requirements Determined by the Jurisdiction: The task force recommends striking the adoption of Table 302.1, the list of 22 additional requirements to be designated by the AHJ. The group feels that the overall number of electives required should apply to the entire code with some exceptions as noted in the Detailed Chapter Analysis and Recommendations.

Flexibility for the applicant is important. For new construction, 20% of electives are a reasonable number if the credits are spread among a minimum of four chapter categories. For existing buildings, 15% of electives are a reasonable number if the credits are spread among a minimum of two chapter categories.

# AIA Potomac Valley

A Chapter of the American Institute of Architects

## Square Footage (SF) Size Thresholds:

Across-the-board square-footage size requirements will make adoption of the IgCC a hardship for many project types. The recommendation is to scale the SF thresholds based on the industry standards for type of use and energy use because the variables fall into three categories: a) applicability of the code, b) mechanical systems, and 3) envelope design. This will take more time to analyze and the PV-Task Force can assist the DPS to better define these thresholds.

## Adoption in Other Jurisdictions:

While the scope of regional adoption of the IgCC was not a primary task for the PV-Task Force, the group notes the following observations in regard to green code adoption in the region:

### Baltimore City Adoption

- In Baltimore City all newly constructed, extensively modified buildings that have or will have at least 10,000 square feet must be LEED-Silver certified or comply with the Baltimore City Green Building Standards (a LEED-like standard).
- Baltimore City is soon to introduce legislation expanding the options for building owners to select from a menu such that a project can be: LEED-Silver certified, or complies with the IgCC, or meets the ASHRAE 189.1 standard, or satisfies Enterprise Green Communities requirements, or complies with ICC 700. (This menu approach is similar to what DC is moving to.)
- The menu approach under legislative consideration will amend the existing Baltimore City Green Building Law whereby the listed options may be available in 4<sup>th</sup> quarter 2013 and the existing city-drafted regulatory alternative to LEED will remain available until June 1, 2015.
- The only real controversy in proposed legislation has been about the definitions for modified (i.e. the threshold for renovated buildings) structures and in the newly proposed code nearly all renovations will have to comply with the law.

### Washington, D.C.

- Although typically slower than Maryland in adopting new code cycles, DC includes stakeholders in the process of code adoption. In the case of the IgCC, to date the input seems to be a great success.
- DC is considered a national green building leader. Green building standards there do not seem to be a deterrent to development.
- DC has adopted a modified approach to IgCC adoption. They moved many items to the Appendix section and recommended 15 credits be achieved, in any category, from 75 credit options.
- DC is more urban than Montgomery County, yet has several paths to compliance: IgCC, ASHRAE 189.1, LEED, and Enterprise Green Communities

### Virginia Adoption

Adoption of the IgCC does not seem imminent. In conversations with VA officials, one of the main issues in adopting the IgCC is related to the land use, zoning, related impact the overlay code might have. Since the state of Virginia sets building codes, without local amendments, the IgCC might be considered too difficult to implement with such a diverse landscape, the officials stated that they do not plan to adopt at this time. If less restrictive to permit there, it could be perceived as an economic disadvantage to build or renovate in Montgomery County.

# AIA Potomac Valley

A Chapter of the American Institute of Architects

February 4, 2014

Ms. Diane Schwartz-Jones, Director  
Department of Permitting Services  
255 Rockville Pike, 2nd Floor  
Rockville, Maryland 20850-4166

Copy via email to [diane.jones@montgomerycountymd.gov](mailto:diane.jones@montgomerycountymd.gov)

Dear Ms. Schwartz-Jones,

Re: AIA-Potomac Valley Chapter, IgCC/ASHRAE 189.1 Task Force Recommendations

On July 30, 2013, the AIA-Potomac Valley Chapter (AIA-PV) submitted recommendations to you in regard to possible adoption of the International Green Construction Code (IgCC). As you know, the AIA-PV has a task force group who has been working together on this subject matter for some time. The group is comprised of a multi-disciplinary group of design professionals: architects, engineers, a developer/landscape architect, a builder, and others.

This letter provides supplemental information that responds to your staff's request that our group also review and make recommendations in regard to possible adoption of the ANSI/ASHRAE/USGBC/IES Standard 189.1-2011 -- Standard for the Design of High-Performance Green Buildings, Except Low-rise Residential Buildings (also referred to as ASHRAE 189.1, 2011). ASHRAE 189.1 is an alternative means of compliance incorporated into the IgCC 2012 codebook. We hope this additional information meets your needs:

As mentioned in our July 30, 2013 letter, the AIA-PV group still recommends that Montgomery County:

- Refer to our July 30, 2013 Executive Summary (Attachment A) and detailed recommendations previously submitted
- Proceed slowly and cautiously in order to give design professionals, builders, and owner's time to acclimate to the requirements, especially criteria that have the potential to slow economic development in the county while other nearby jurisdictions are taking a measured approach or not yet shifting to these codes.
- Adopt the IgCC and alternative compliance paths (including ASHRAE 189.1) and do away with the current Montgomery County Green Building Law.

In addition, we recommend you create an industry advisory panel to make a solid implementation plan with the Department of Environmental Protection (DEP). We feel this is important because most of the details and issues to implement the County Council's proposed green building legislation are at the direction and responsibility of the Director of DEP and because those legislations overlap with requirements in green building codes that DPS is proposing.

The following items in Attachment B summarize the detailed analysis and recommendations of the AIA-PV-Task Force in regard to ASHRAE 189.1\*:

- Section 5, Site Sustainability
- Section 6, Water Use Efficiency
- Section 7, Energy Efficiency
- Section 8, Indoor Environmental Quality
- Section 9, The Building's Impact on the Atmosphere, Materials, and Resources
- Section 10, Construction and Plans for Operation

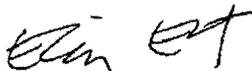
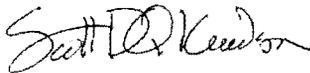
\* Unlike the IgCC, ASHRAE 189.1 does not have a chapter for historic and existing buildings so comments on those building types have been incorporated into each section's recommendations.

# AIA Potomac Valley

A Chapter of the American Institute of Architects

Once you have had a chance to review our recommendations, the PV-Task Force members would be pleased to meet with you in person to answer questions, clarify our recommendations, or address any item of interest that we may have overlooked. Thank you for giving us this opportunity to assist you.

Sincerely,



Scott Knudson, AIA; AIA-PV Past-President 2013, [sdqknudson@gmail.com](mailto:sdqknudson@gmail.com)  
Eileen Emmet, AIA, IgCC Task Force Co-Chair, [eemmet.aia@gmail.com](mailto:eemmet.aia@gmail.com)  
William (Bill) LeRoy, AIA, IgCC Task Force Co-Chair, [w170@icloud.com](mailto:w170@icloud.com)

Attachment A: AIA-PV July 30, 2013 IgCC Executive Summary  
Attachment B: AIA-PV ASHRAE 189.1 Recommendations

cc DPS: Hadi Mansouri, [hadi.mansouri@montgomerycountymd.gov](mailto:hadi.mansouri@montgomerycountymd.gov),  
Mark Nauman, [mark.nauman@montgomerycountymd.gov](mailto:mark.nauman@montgomerycountymd.gov)  
Hemal Mustafa, [hemal.mustafa@montgomerycountymd.gov](mailto:hemal.mustafa@montgomerycountymd.gov)

Cc: IgCC/ASHRAE 189.1 Task Force Members:

Ralph Bennett, AIA; Bennett, Frank, McCarthy Architects  
Bruce Blanchard, Senior Consultant, Polysonics Acoustics & Technology Consulting  
Daniel Coffey, Vice President, Therrien Waddell, Inc., Chairman USGBC-NCR, Montgomery County Chapter  
Stephen Kirk, International Code Council, Associate Member  
Suketu Patel AIA LEED AP BD+C; President, Integrated Design Studio LLC  
Kirill Pivovarov, AIA, LEED AP; Principal, RTKL Associates Inc.  
Steven Schwartzman, AIA, LEED AP; Associate Principal, WDG ARCHITECTURE  
Geoff Sharpe, ASLA  
Catherine E. Sheehan, AIA, LEED AP  
Adam Spatz, PE, LEED AP; Senior Mechanical Engineer, Greenman-Pedersen, Inc.  
Paul Tseng, PE, CxAP, CPMP, CMVP CEM, LEED AP; President, Founder, Advanced Building Performance  
Amy Upton, LEED AP BD+C; Director of Environmental Design, Senior Associate, Grimm + Parker

**Council Bill 2-14 – Favorable**

**Testimony of Steven Beatrice, Boland Trane Services, Inc.  
To the County Council for Montgomery County**

**February 11, 2014**

I thank you for the opportunity to testify in strong support of Bill 2-14, requiring energy performance ratings for large, existing commercial buildings in Montgomery County.

**Boland Trane Services, Inc. (Boland)**

Boland was founded in 1960 by Louis J. Boland, Sr. and has grown from a small HVAC equipment sales and service company to a Professional Services company, with just over three hundred employees in our Gaithersburg headquarters, providing a complete slate of building Energy Service solutions. Thirty-six Boland employees hold one or more of the following professional or industry certifications: Professional Engineer, Certified Energy Manager, LEED Accredited Professional/Green Associate, Certified Sustainable Development Professional and Certified Buildings Systems Commissioning. Boland provides energy benchmarking services, energy audits, building energy modeling, re- and retro-commissioning, building energy management system design and construction and HVAC equipment upgrades.

**A Property's Single Largest Operating Expense**

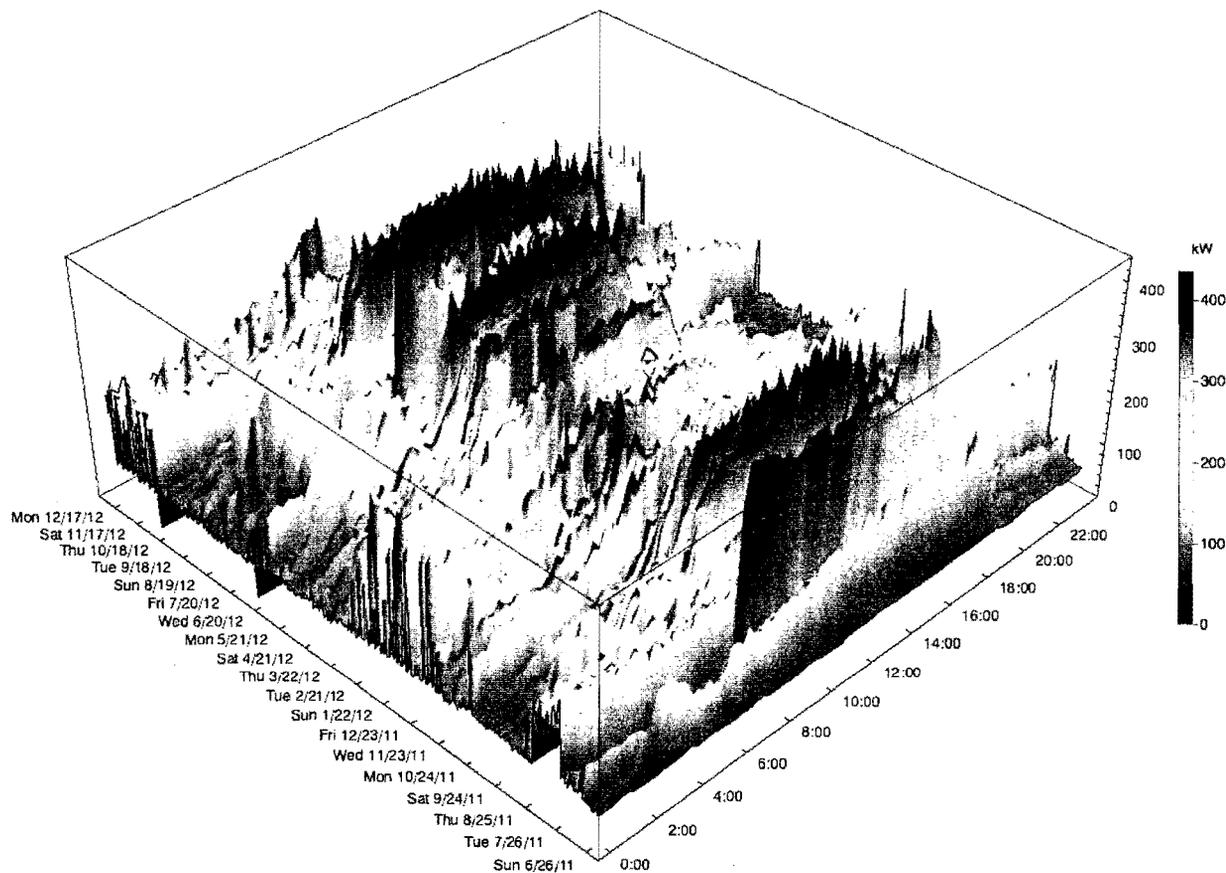
According to the EPA, energy represents 30 percent of the typical office building's costs and is a property's single largest operating expense. Building energy benchmarking provides property owners with the information to compare building energy performance across a portfolio or with comparable buildings within the same region and will identify opportunities for significant reductions in operating costs resulting in increased profitability and competitiveness of their business.

**Retro-commissioning and Energy Auditing**

On a higher level, an Energy Services Company (ESCO) such as Boland may be brought in to perform retro-commissioning (retro-cx) and auditing of a building. Retro-commissioning looks at the entire building as a system to identify and rank all possible energy efficiency measures, everything from simple maintenance procedures to building envelope improvements to adding solar or wind renewable energy sources. As Boland's energy professionals identify and qualify

energy saving opportunities with a building owner other trades and contractors will be engaged to provide specialized skills, products and systems furthering the growth of Montgomery County's workforce.

Recent technological advances associated with Advanced Metering, Data Acquisition and Data Analysis have reduced the costs of retro-cx and auditing. These technologies enable Boland to incorporate the retro-cx and auditing into an annual maintenance contract. Also, Boland can make more precise and quicker evaluations of a building's energy performance – think of it as having and MRI of a building's energy performance over a year (Figure 1), being able to record in 15-minute intervals ongoing performance data of all control points from the EMS (Figure 2) and automatic monthly updates of Energy Star's Portfolio Manager account (Figure 3).



**Figure 1.**

<sup>1</sup> "The Cost-Effectiveness of Commercial-Buildings Commissioning,"

Lawrence Berkeley National Laboratory. <http://eetd.lbl.gov/EMills/PUBS/Cx-Costs-Benefits.html>

<sup>2</sup> <http://www.boma.org/research/newsroom/press-room/2013/Pages/EPA-Recognizes-BOMA-International-with-2013-ENERGY-STAR%C2%AE-Partner-of-the-Year-Sustained-Excellence-Award.aspx>

<sup>3</sup>[http://www.energystar.gov/index.cfm?current\\_sort\\_column=SECTOR&current\\_sort\\_order=ASC&resultsPerPage=20&fuseaction=partner\\_list.showPartnerResults&s\\_code=ALL](http://www.energystar.gov/index.cfm?current_sort_column=SECTOR&current_sort_order=ASC&resultsPerPage=20&fuseaction=partner_list.showPartnerResults&s_code=ALL)

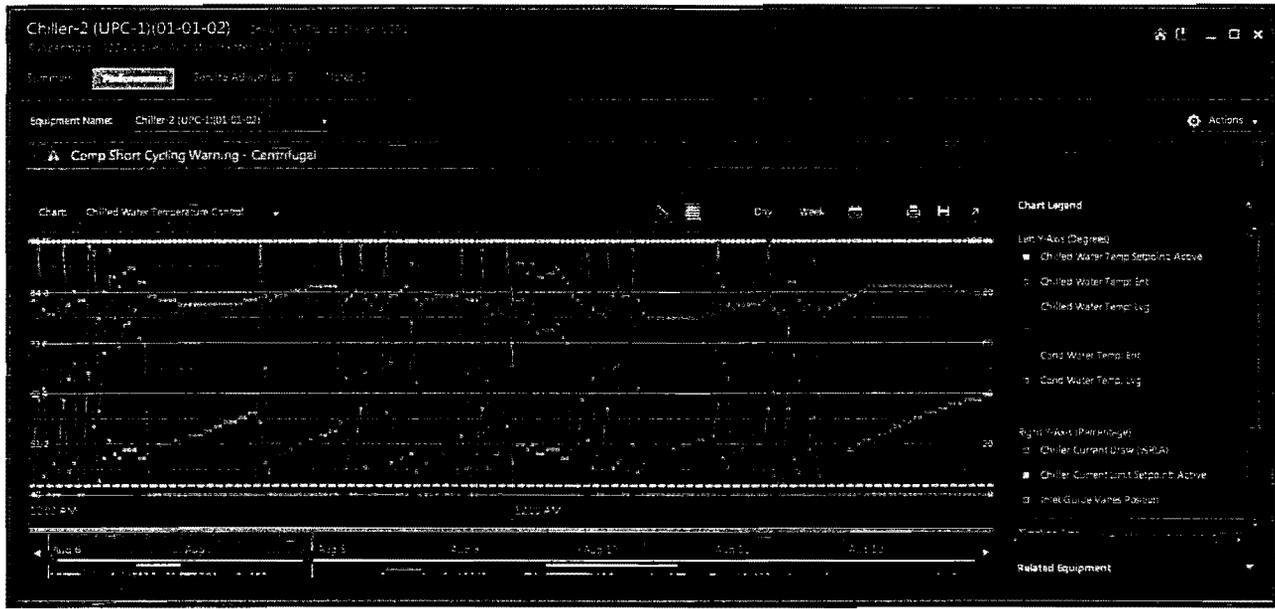


Figure 2.

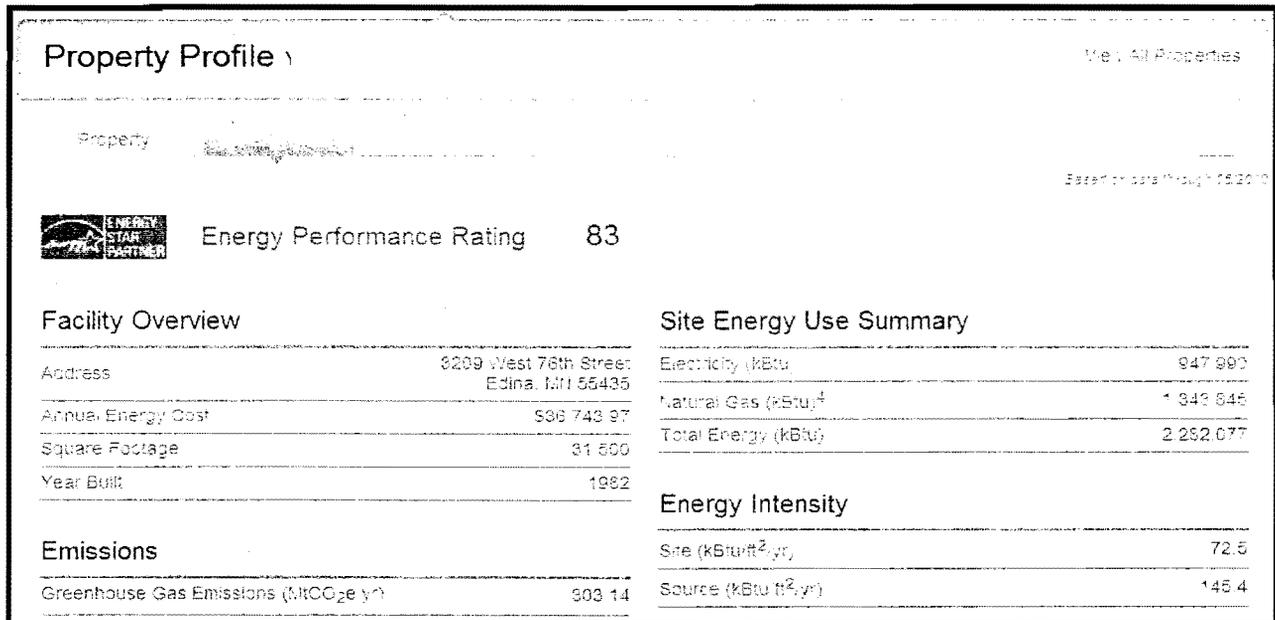


Figure 3.

<sup>1</sup> "The Cost-Effectiveness of Commercial-Buildings Commissioning,"

Lawrence Berkeley National Laboratory. <http://eetd.lbl.gov/EMills/PUBS/Cx-Costs-Benefits.html>

<sup>2</sup> <http://www.boma.org/research/newsroom/press-room/2013/Pages/EPA-Recognizes-BOMA-International-with-2013-ENERGY-STAR%C2%AE-Partner-of-the-Year-Sustained-Excellence-Award.aspx>

<sup>3</sup> [http://www.energystar.gov/index.cfm?current\\_sort\\_column=SECTOR&current\\_sort\\_order=ASC&resultsPerPage=20&fuseaction=partner\\_list.showPartnerResults&s\\_code=ALL](http://www.energystar.gov/index.cfm?current_sort_column=SECTOR&current_sort_order=ASC&resultsPerPage=20&fuseaction=partner_list.showPartnerResults&s_code=ALL)

## Why Enact Disclosure of Energy Benchmarking Information?

- The voluntary users of benchmarking understand the benefits of energy efficient buildings; a benchmarking law would universally touch all others.
- Energy Star as a standard, third-party program, becoming mainstreamed, will make building energy ratings as ubiquitous as the gas mileage ratings of autos and as easily understandable – bogus or abnormal ratings will immediately raise a flag with prospective buyers or tenants.
- The real estate industry has embraced the use of Energy Star benchmarking:
  - BOMA has received multi-year EPA Energy Star Partner of the Year awards and received the Energy Star Sustained Excellence Award in 2009, 2010, 2012 and 2013<sup>2</sup>
  - Thirteen of 162 2010 EPA Energy Star Leaders are Commercial Real Estate companies<sup>3</sup>

As building owners increasingly recognize the importance to their bottom line of reducing their environmental impact and increasing asset value they turn to energy experts for solutions. As the demand for energy efficiency solutions grows so does the demand for companies who can identify the solutions and companies who can provide these services. As with other Energy Services Companies, Boland recognizes the financial and environmental benefits of applying energy benchmarking and retro-commissioning to the stock of Montgomery County's existing buildings. A result of this focus on energy services, over the past few years of economic downturn, Boland has maintained our workforce with no expectations for downsizing. A favorable review of Bill 2-14 will demonstrate your commitment to stimulating Montgomery County's economy with more green jobs and to promoting an environmentally attractive commercial real estate market.

Thank you to the Chair and Council members for your time today. Feel free to contact me with any follow up questions or information requests.

### Contact Information:

Steven D. Beatrice, CEM, LEED AP+OM, CSDP  
240.306.3202  
[steve.beatrice@boland.com](mailto:steve.beatrice@boland.com)

Boland Trane Services, Inc.  
30 West Watkins Mill Road  
Gaithersburg, MD 20878

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<sup>1</sup> "The Cost-Effectiveness of Commercial-Buildings Commissioning,"

Lawrence Berkeley National Laboratory. <http://eetd.lbl.gov/EMills/PUBS/Cx-Costs-Benefits.html>

<sup>2</sup> <http://www.boma.org/research/newsroom/press-room/2013/Pages/EPA-Recognizes-BOMA-International-with-2013-ENERGY-STAR%C2%AE-Partner-of-the-Year-Sustained-Excellence-Award.aspx>

<sup>3</sup> [http://www.energystar.gov/index.cfm?current\\_sort\\_column=SECTOR&current\\_sort\\_order=ASC&resultsPerPage=20&fuseaction=partner\\_list.showPartnerResults&s\\_code=ALL](http://www.energystar.gov/index.cfm?current_sort_column=SECTOR&current_sort_order=ASC&resultsPerPage=20&fuseaction=partner_list.showPartnerResults&s_code=ALL)

February 19, 2014

Councilmember Roger Berliner  
Chair, Montgomery County Transportation, Infrastructure, Energy & Environment Committee  
Montgomery County Council  
100 Maryland Ave  
Rockville, MD 20850

RE: Calvert Investments Support for Bill # 2-14, Environmental Sustainability – Buildings Benchmarking

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Dear Councilmember Berliner:

I am writing on behalf of Calvert Investments, a longstanding Montgomery County business to support Bill # 2-14, Environmental Sustainability – Buildings Benchmarking.

Building disclosure standards help markets work by providing more information, and well-functioning markets can yield more efficient and sustainable buildings. Investors have an interest in more efficient and sustainable buildings as they are more sustainable investments from a financial and environmental perspective.

Building energy benchmarking and disclosure standards are valuable to tenants who may wish to understand and reduce their energy use and costs, and minimize their environmental footprint. As a tenant in an office building in downtown Bethesda, Calvert has sought to better understand its own energy use and the related energy efficiency of the building where its offices are located. Improved disclosure requirements would help Calvert and other building tenants across the County to do that. Improved disclosure often leads to better management and improved performance, which is a potential source of costs savings and greenhouse gas emissions reductions. In addition, requiring commissioning at certain buildings, as the Bill would do, is an important way to ensure that such buildings are operating efficiently, as intended.

From the investor perspective, energy efficiency is critical throughout the economy given volatile energy prices and concerns related to climate change. Calvert and a growing number of institutional investors in the United States and around the world look at corporate energy efficiency as part of their investment process. This applies particularly to residential and commercial buildings. Indeed, Calvert released reports in 2008 and 2010 that benchmarked the sustainability practices of large U.S. homebuilders, with a special emphasis on energy efficiency. The purpose of these reports was to better understand which companies were best managing environmental and energy risks and opportunities, and by extension, which companies were positioned to meet the growing consumer interest in green building attributes.

In addition to addressing investor and consumer interest in energy performance, this bill can help reduce energy consumption. Buildings represent a particularly compelling energy savings opportunity, using approximately 40% of the world's primary energy. Simply benchmarking buildings has been shown to reduce energy use (and the subsequent emissions) by 7%. Furthermore, green buildings are attractive to investors, because they can contribute to higher

rents, ROI improvement, building value increases, and higher occupancy rates, all of which can lead to increased shareholder value.<sup>1</sup>

Fortunately, the Commercial Real Estate industry can invest profitably in energy efficiency. According to a McKinsey report, commercial buildings account for 32% of the "efficiency potential in stationary uses of energy" in terms of primary energy. McKinsey finds that "only a small share of the commercial sector's energy productivity potential is currently being captured."

Investments in energy efficiency make a great deal of sense. In 2008, McKinsey estimated that worldwide, \$170 billion could be invested yearly in energy efficiency with an average annual Internal Rate of Return (IRR) of 17%. (By comparison, ten year U.S. treasury notes currently yield below 1.7% annually). By 2020, these investments could produce billions in annual energy savings.

Indeed, many companies have already benefited from their investments in energy efficiency. Between 2000 and 2006, Trizec (now Brookfield Properties Corporation) invested \$20 million in efficiency upgrades. The company achieved an average payback time of less than 2.2 years and cut its energy bill by 16%. The owners of the Empire State Building also invested in energy efficiency retrofits, and earned a 30.8% annual return.

Many cities and other jurisdictions have established building energy disclosure, including New York City, Philadelphia, Seattle, San Francisco, Boston, Minneapolis, Chicago, and Washington, DC. These governments see the value in improving the energy productivity of their buildings and understand that being known as leaders in sustainability can help attract business and investment.

Montgomery County has demonstrated a commitment to sustainability. Approving this bill will help to bolster the County's leadership on this set of issues.

Respectfully submitted,

Ron Wolfsheimer (S.O.)

Ronald M. Wolfsheimer  
Executive Vice President, Chief Financial and Administrative Officer  
Calvert Investments, Inc.

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<sup>1</sup> McGraw Hill Construction, "Green Outlook 2011: Green Trends Driving Growth", November 2010, <http://aiacc.org/wp-content/uploads/2011/06/greenoutlook2011.pdf>. Ranges result from differences between retrofits and new buildings.

Charles K. Nulsen, III – Speaker #5

Against Bills 2, 3, 5, and 6-14

Outline Testimony

- I. Thank you for letting me speak tonight. My name is Charlie Nulsen. I am the President and Owner of Washington Property Company, a small Bethesda based real estate company. I have worked in real estate in Montgomery County for 35 years. I am here to speak in opposition of 4 of the bills. #2, 3, 5, and 6, I disapprove more than just these 4. I have been warned that I will speak to you in English, but you will hear a foreign language. Not a great characterization from my business brothers, but bad communication is a 2 way street and I am here for the first time as my attempt to help address this issue.
- II. I want to start with big picture
  - a. Montgomery County is in a double dip recession of the likes it has never seen. Ever!
  - b. The Federal Government's economic impact on Montgomery County will be declining for the next 20 years – It is a technology thing –Montgomery County for the first time must rely heavily on private sector growth.
  - c. Our commercial tenant base is dwindling – 25% vacancy in our office market is structural.
  - d. WPC's commercial property taxes have decreased 30% in last five years and I predict another 15-20% drop in the next two because of lower rents, increased vacancy, causing lower assessments. I have commercial

properties in Bethesda, Silver Spring, Rockville, I-270; they are all at the distressed stage.

- e. Montgomery County has supplemented this loss in commercial real estate income with taxes – particularly on utilities to the tune of \$233M in 2013. Montgomery County Energy Tax accounts for approximately 30% of commercial Pepco bill and 15% of residential Pepco bill.

III. Bill 2-14 – Environmental Sustainability – Buildings Benchmarking

- a. Modelled after the District – creates 2 weeks of reporting man hours for the owner. Probably 3 times that on the Government side. D.C. owners do their own energy assessments as a matter of business. So do Montgomery County owners.
- b. Taken in the context of Montgomery County.
  - i. It will highlight to corporate tenants a Corporate Energy Tax that could be highest in the country! Montgomery County utility bills are 30% higher than DC or VA. Montgomery County collects more for the distribution of electricity than Pepco itself. What policy goal are we serving here?
  - ii. It comes at a terrible time for the commercial industry. More cost – zero pay back. “The house is on fire, but turn out the lights before you leave.”

IV. Bill 3-14 Silver LEED requirements

- a. Silver LEED for residential is very hard to obtain and further drives up the cost of rental and for-sale product.

b. Commercial Construction is dead – inside beltway development activity is 11-1 residential / office. Why throw up another road block to commercial growth?

c. County Buildings - ok

V. Bill 5-14 Carbon Assessment

a. If you have a Silver LEED requirement for County Buildings why is there a need for social carbon assessment?

VI. Bill 6-14 Office of Sustainability

a. Does the County, within it's current budget constraints, really have the resources to add an additional department?

b. Sustainability is an often used term: but let's look at Montgomery County's overall direction: Decreasing commercial tax base / exploding residential base (especially rental) Is this really sustainable?

I am the poster child for a real estate owner in Montgomery County. I had a \$16M office building on 270, then Lockheed moved out. An appraisal 2 weeks ago (done by lender) gave the value at \$6M. Basically the value of the ground. But, in 2 months I will be starting my 3<sup>rd</sup> apartment project in Montgomery County, which will bring in more renters that need County services.

I don't think this path is sustainable for a healthy Montgomery County. We need balance.

To put it in another context – over the past 8 years Montgomery County has gotten an A- in environmental stewardship and an F in economic stewardship. I suggest we collectively, as a community, focus on pulling our F up to a C instead of our A- to an A so we may pass on to future generations a healthy, sustainable Montgomery County.

Thank you.



February 11, 2014

The Honorable Craig Rice  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, 6th Floor  
Rockville, MD 20850

RE: Bill 2-14, "Environmental Sustainability – Buildings – Benchmarking" and Bill 3-14, "Buildings – Energy Efficiency – Energy Standards" (together, the "Environmental Bills", or "Bills")

Dear Council President Rice and Members of Council:

The Greater Bethesda-Chevy Chase Chamber of Commerce and the Greater Silver Spring Chamber of Commerce (together, the "GB-CC and GSS Chambers") recently met with Councilmember Berliner, representatives of his staff, and representatives from other county chambers to discuss the above-referenced environmental bills, provide general comments, and pose our preliminary questions and concerns. The GB-CC and GSS Chambers collectively represent the interests of nearly a thousand business members in Montgomery County.

Both our Chambers are very concerned that the Environmental Bills are being introduced at an inopportune time, given that the County's commercial real estate industry is experiencing tremendous difficulty and strain due to record high vacancy rates. While we recognize the importance of the policies and goals that the Environmental Bills seek to address – making sure that the County is more "green," more "sustainable," and more energy efficient – we strongly believe that regulatory measures of this kind need to be structured and analyzed in a deliberate manner to ensure that the efforts to attain the stated policies and goals will be successful, without resulting in increased costs or unintended consequences. Sufficient time and attention to detail will be necessary to ensure that the bills are workable both for the County and for the businesses and individuals who will be subject to their requirements, especially in these difficult times for building owners.

We strongly believe that incentives work better than mandates for the purpose of encouraging building owners to increase the efficiency of their buildings and to promote sustainability. Thus, we are very concerned about Bill 2-14, "Environmental Sustainability – Building Energy and Benchmarking." The bill, as currently drafted, is vague in certain respects but has potential implications for the business community and County taxpayers that could be significant. At the same time, other than collecting information for County government at the expense of building owners, no purpose is provided for the use of this information. While not an exhaustive list, some of the important questions that are raised by – but not answered in – the bill are as follows:

- The bill applies to two groups of buildings, defined in the bill as "Group 1 Covered Buildings" and "Group 2 Covered Buildings." Does the County know how many of each group type exist in the County? Before the legislation is enacted, shouldn't that information be known to determine the scope of the legislation and to assess the potential costs associated with implementation and compliance?
- The bill's definition of "gross floor area" differs from that in the Montgomery County Zoning Ordinance. Is this intentional? If so, why?
- Are the "waiver" provisions adequate to protect owners of older buildings? Are vacancy and other thresholds set at appropriate levels?
- Why is the benchmarking information supplied by an owner not sufficient? Why does this information have to be verified by a "licensed professional"? What will it cost the building owner to have the information verified?

- If certain information is to be provided by a tenant but the tenant does not provide it, how can the owner supply it? Yet, under Section 18A-41(c) of the bill, the onus is on the owner, who is "not relieved of the obligation to benchmark the building". The owner's information, without input from the tenant, may not be accurate, despite the owner's good faith efforts to comply. How will that inaccuracy be factored in the undescribed use of the information?
- The bill requires the director of the Department of Environmental Protection to submit an annual report to the County each year. Will the "disclosure of benchmarking information" under 18A-42(c) protect proprietary information of businesses? The chambers strongly believe that it should.
- The energy audit provisions of the bill define "covered buildings" differently than the definition in the benchmarking provisions of the bill. Why?
- What will an energy audit cost? Who will pay the cost? How will "any reasonable measures" to reduce energy use or the costs of operating a building be determined? Who will make that determination? Will implementation of such measures be required?
- We understand that commissioning is an expensive and time-consuming process. How much will retro-commissioning cost?

In order to address the concerns of the GB-CC and GSS Chambers and others, we believe that the County should conduct a "pilot program" on one of its older buildings (perhaps the County Office building at 100 Maryland Avenue) to demonstrate how Bill 2-14 would affect owners and possibly tenants in a real world environment before deciding to launch the program County-wide. Such a demonstration would allow the County to study the impacts of the bill to ensure that its goal of increasing energy efficiency will accomplish its intended result and will not cost more than it will save. This would go a long way towards encouraging building owner and tenants to support the bill.

We have a number of similar concerns about Bill 3-14, "Buildings – Energy Efficiency – Energy Standards." Principally, we understand that sustainable design and construction practices are being gradually incorporated into the building codes promulgated by the International Code Council and adopted with increasing frequency by municipalities. In response, in order to protect its position as a market leader, the U.S. Green Building Council is continually refining and making the necessary requirements for LEED certification more stringent. Has the County considered or evaluated the ever-increasing costs of compliance with the ever-changing LEED standards or the certification program? Additionally, has there been any study of development under the County's current Green Buildings Law? Finally, in what respect has the current law proven to be insufficient to meet policy objectives so as to call for changes?

While we do not support the Environmental Bills as currently drafted, we look forward to working with the County to further define the language in these bills, to revise them as necessary to prevent any unintended consequences, and to further understand the implications the bills will have for our members.

Thank you for your consideration of these comments.

Sincerely,



Ginanne Italiano, President & CEO  
Greater Bethesda-Chevy Chase Chamber



Jane Redicker, President & CEO  
Greater Silver Spring Chamber

cc: Manual Ocasio, Chair, GSSCC  
Andy Shulman, Chair, GB-CCCC  
William Kominers, Chair, GSSCC Government Affairs Committee  
Christopher Ruhlen, Vice President, GB-CCCC Economic Development & Government Affairs

# GUARDIAN

REALTY MANAGEMENT, INC.

## VIA E-MAIL AND REGULAR MAIL

February 11, 2014

The Honorable Craig Rice  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, 6th Floor  
Rockville, MD 20850

Re: Councilmember Berliner's Energy/Environment Legislative Initiatives  
Bill 2-14, *Environmental Sustainability – Buildings – Benchmarking*  
Bill 3-14, *Buildings – Energy Efficiency – Energy Standards*

Dear Council President Rice and Members of Council,

On behalf of Guardian Realty Management, please accept this letter in opposition to Bill 2-14, *Environmental Sustainability – Buildings – Benchmarking*, and Bill 3-14, *Buildings – Energy Efficiency – Energy Standards* (together, the "Energy/Environment Initiatives"). The Energy/Environment Initiatives are overly aggressive in their approach to energy conservation and sustainable development policy. Without additional incentives and carve-outs, the Energy/Environmental Initiatives will disproportionately impact the owners of older, mature buildings in Montgomery County by increasing financial costs, administrative complexity and, potentially, producing disincentives for reinvestment. Our specific concerns are as follows.

We are extremely concerned about Bill 2-14's requirements for the public Disclosure of building energy performance information. Such mandatory disclosure is invasive and lacks fundamental protections for privacy and proprietary information, and does not advance any legitimate public interest. Energy efficiency information is routinely provided between buyers and sellers, and between commercial landlords and tenants. Furthermore, to the extent that publication of such information may chill transactions involving mature buildings, such a requirement will have negative consequences. This is particularly disconcerting, given that commercial building owners in the County continue to struggle with difficult economic conditions, evidenced by continued high vacancy rates.

With regard to Bill 2-14, *Environmental Sustainability – Buildings – Benchmarking*, we note that there are no provisions for the kinds of financial incentives that have ensured the success of benchmarking legislation in other jurisdictions. Energy audits and retro-commissioning are not cost-free to building owners. While we understand that the County has recently adopted legislation to facilitate a commercial property assessed clean energy ("PACE") program, this program addresses the costs associated with energy efficient improvements, not audits or retro-commissioning expenses. PACE financing also requires lender approval and, therefore, cannot be guaranteed. To achieve the desired policy outcomes, the County must provide proven incentives (e.g., grants, tax credits, tax rebates). Such

incentives recognize that greater gains in energy efficiency can be made through an investment-driven, rather than strictly regulatory, approach.

Regarding Bill 3-14, *Buildings – Energy Efficiency – Energy Standards*, LEED Silver certification is simply too onerous for properties that are not located in "Smart Growth" areas. Achieving any LEED rating becomes more difficult over time, as newer, more stringent versions of the rating systems are released in response to the standardization of sustainable development principles and practices into municipal building codes. We are very concerned that requiring LEED Silver certification will make desirable, necessary renovations more costly, and thus potentially bar reinvestment in older buildings. Certain "extensive modifications" to existing buildings (i.e., structural modifications altering more than 50% of the building gross floor area of a covered building) would become subject to LEED review based on factors that were not contemplated at the time of development. It may even be the case that even a Certified level rating (as required under the existing law) is not achievable for certain existing mature buildings in desperate need of renovation. The County should consider exempting extensive building modifications from any LEED rating requirements in connection with Bill 3-14.

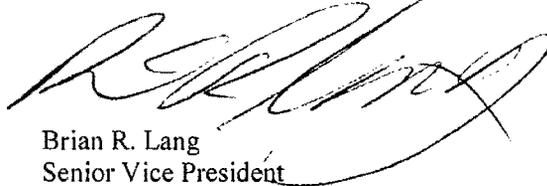
The County should undertake a comprehensive, comparative fiscal review of the costs that the Energy/Environment Initiatives propose to impose on the private sector, so that the consequences of approval are understood and transparent. We believe the financial implications for building owners are significant.

Furthermore, the Energy/Environment Initiatives raise issues that are worthy of careful, deliberate analysis. We strongly believe that the Council should task an informal "commission" comprised of local building owners or their representatives to study these issues, and to work with the Council towards refining the proposed Energy/Environment Initiatives. This common-sense approach would serve to avoid unintended consequences, and we would be more than happy to participate.

Thank you for your consideration of the above.

Very truly yours,

**Guardian Realty Management, Inc.**



Brian R. Lang  
Senior Vice President

BRL/sm

cc: Patricia Harris, Esquire

## Mihill, Amanda

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**From:** Faden, Michael  
**Sent:** Tuesday, February 11, 2014 1:24 PM  
**To:** Mihill, Amanda  
**Subject:** FW: Energy Bills Testimony

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**From:** Robert Kaufman [mailto:rkaufman@mncbia.org]

**Sent:** Tuesday, February 11, 2014 12:44 PM

**To:** Berliner's Office, Councilmember; Riemer's Office, Councilmember; Floreen's Office, Councilmember; Leventhal's Office, Councilmember; Rice's Office, Councilmember; Elrich's Office, Councilmember; Andrews's Office, Councilmember; Navarro's Office, Councilmember; Branson's Office, Councilmember; Hoyt, Bob

**Cc:** Goldstein, Steven; Gibson, Cindy; Faust, Josh; Healy, Sonya; Jones, Diane; Wright, Gwen; Zyontz, Jeffrey; Orlin, Glenn; Faden, Michael; Michaelson, Marlene; McMillan, Linda; Kelly Grudziecki; Bruce H. Lee; Bryant F. Foulger; Bob Harris; William Kominers; selmendorf@linowes-law.com; tdugan@shulmanrogers.com; Montenegror@ballardspahr.com; Pharr, Shaun; Clark Wagner; JRussel@rodgers.com; Paul Chod; Steve Robins; Steve Orens; Ilaya Hopkins; Ilana Branda; lisetracey@yahoo.com; gitaliano@bccchamber.org; Jane Redicker; Annette Rosenblum; mjackson@mncbia.org; dswenson@mncbia.org

**Subject:** Energy Bills Testimony



Please accept the following as Testimony on behalf of the MNCBIA concerning the various Energy related bills introduced by Councilmember Berliner and others.

### **Bills 11-14 and 10-14 Expedited Review**

We understand and appreciate the desire to provide an expedited review as an incentive to promote use of energy saving technology, the facts however suggest that all new buildings and remodeling meet substantially higher standards of energy efficiency and all deserve efficient review and approval. Especially since passage of the 2012 Building and Energy Code changes, all new and remodeled buildings today provide substantial energy savings and efficiencies. Additionally, identifying specific permits to expedite may not be as simple as it seems given the complexities of today's permits and construction techniques. The Solar permits or charging permits may be part of a much larger permit application and may not be easily separated for expedited review. The MNCBIA recently established a Solar Energy Program with ASTRUM Solar to encourage use of Solar installations on new homes and would in fact benefit from an expedited process.

**Instead, however, we urge the County to continue to improve the overall permit review and approval process so that an expedited review becomes moot.** We draw attention to and gratefully acknowledge the recent announcement by DPS to institute an electronic plan submission for new construction and right-of-way permits and look forward to other improvements.

### **Bill 6-14 Environmental Sustainability Office**

Given the real world changes to our land use regulations and building codes, an office of sustainability best serves the County as a comprehensive planning approach that encourages coordination and balance to maximize use and maintenance of our complex systems that tie together smart growth planning, land use planning, building use, land use and transportation. **We support encouraging MNCPPC to create a position of a sustainability planner in MNCPPC** where we do our forward thinking. The Department of Environmental Protection provides guidance and support for land use related issues and environmental stewardship of our land. Sustainability implies economics, construction,

government policy, business management, coordination, building technology as well as land use most of which remain outside the purview of DEP.

### **Bill 3-14 Building Standards - LEED Silver**

New buildings today increasing meet a minimum of LEED or other similar certification such as IgCC and Green Globes.

The LEED Silver level continues to evolve and relies on land use based issues as well and energy efficiencies that cannot be easily achieved. **We prefer continuing to allow the market place to work toward green options** particularly in light of the new energy and building codes and prefer capitalizing on the current market trend toward green certification at the LEED certified, IgCC and Green Globes levels.

### **Bill 2-14 Benchmarking**

Currently we operate on a whole new set of energy saving requirements for all new and remodeled buildings based on the 2012 Building and Energy Codes. In addition, nearly all new buildings today meet LEED certified or similar standard. Benchmarking becomes excessive under these circumstances. Additionally, we need to agree on what purpose the benchmarking serves. As currently developed by EPA, the benchmarking relates largely to greenhouse gas emissions and not costs or energy use. This promotes use of natural gas and renewable energy sources over use of coal, oil, or other carbon based fuel. Today the cost of gas remains comparatively low, this results often in cost savings, however, most users have little say over the source of fuel used to generate electricity and cannot easily switch to gas or renewable sources. Should gas prices rise, than any cost savings may evaporate. Nonetheless, we support the concept of encouraging and supporting efforts to benchmark the energy use of buildings if only to set goals for energy savings over time. **We urge the Council to set up a working group to identify ways to best create, support, encourage and measure building energy use that can be cost effective and manageable.** Especially problematic concerns the requirement to set up benchmarking apparatuses for residential and commercial tenants, or owners of condo space within buildings.

The use of benchmarking can result in the highest energy savings with existing buildings. This unfortunately places the greatest cost burden on the most affordable buildings with the lowest rents, both residential and commercial. Clearly if the investment in energy savings saves money, the owners, tenants and the County have a natural incentive to set up benchmarking. **We urge the County to form a working groups of existing building owners and tenants to consider the most effective way to encourage, support and afford energy re-commissioning.**

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BIA's Networking Happy Hour – Feb. 20  
& FREE Business Development Class  
[Click here](#) for details and to register

FIL Speaker Series with Bryant Foulger – Feb. 21  
Join us for breakfast. [Click here](#)

Celebrity Chefs & Tabletop Night – March 27  
Be a Chef or just come to eat. [Click here](#) for details

Check out NAHB's Member Advantage Program at [www.nahb.org/ma](http://www.nahb.org/ma)

**BUILDING HOMES & CREATING NEIGHBORHOODS FOR 60 YEARS**  
1954-2014

March 12, 2014

Ms. Amanda Mihill, Legislative Attorney  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20805

RE: County Council Bills on Sustainability and Energy Conservation

Dear Ms. Mihill,

Thank you for the opportunity to review and comment on the 13 County Council Bills for Sustainability and Energy Conservation.

I have attached a copy of our own Sustainability Practice 6-40 for your information. M-NCPPC and the Department of Parks are committed to environmental stewardship. Our organization has employed energy conservation measures in many of our parks, facilities and operations over the past several years. These measures include building temperature control, high efficiency HVAC units, low consumption lighting and an aggressive recycling program. I am proud of our staff and their achievements in reducing the environmental footprint of our extensive operations. The attached Practice 6-40 provides documentation of our commitment to these important issues. We also provide cost savings data in an annual energy conservation report available to the County Council, and our progress has been significant.

For clarification on the pending legislation, please consider the following questions and comments:

2-14

- If we own land, but not buildings, will benchmarking be provided by building owners? For example, aquatic centers or community centers located on park property might be affected.
- Does the benchmarking apply to buildings that are to be demolished within 4 years?

8-14

- We recommend that historic buildings as well as small buildings, such as restroom buildings and storage sheds, be exempt. Language to define limits on the size or purpose of the buildings affected is strongly recommended.
- If there are several buildings in a facility, would the requirements apply to every building contained within the facility? A definition of "facility" may be required here.
- If the cost of renewable energy exceeds 2% of the total construction cost, funding equivalent to 2% of the cost may be transferred to another project. Does it mean a project that has qualified renewable energy cost can help other projects to be exempt? If so, do we need to identify which?
- We are concerned about the definition of "Director" in the definitions section of this bill. Currently, we have many county-financed structures (generally as a result of G.O. bonds) on parkland, and the DGS Director currently has no role in managing or benchmarking such structures. We recommend

clarifying language that the "Director" means the DGS Director OR the Director of the agency managing the affected property.

Please keep in mind the Parks infrastructure is quite complex, including many structures that do not fit the traditional definition of office building or warehouse structure. We also have hundreds of aged and often historic buildings, small service buildings, structures or buildings of varying sizes in remote or constrained locations, and a variety of other specialized facilities. Broad-based legislation that could include all of these could ultimately impact us significantly in the benchmarking process. We request clarification regarding the total impact some portions of this legislation may have on such facilities.

Suggested amendments are attached for your consideration.

Overall, we are encouraged by Councilmember Berliner's goals to advance sustainability in buildings and operations. Such conservation is a core mission of the Department of Parks and a mission we have already committed to achieve.

Thank you for the opportunity to comment.

Sincerely,

Mary R. Bradford  
Director  
Department of Parks-Montgomery County  
The Maryland-National Capital Park and Planning Commission

Attachments: Practice 6-40  
Legislative matrix analysis

County Council Bills on Sustainability and Energy Conservation

**PROPOSED AMENDMENTS**

**Bill 2-14 Environmental Sustainability – Buildings - Benchmarking**

18A-38 Definitions

*Line 21 : ...Covered building does not include **buildings that are to be demolished within 4 years or any building with more than 10% occupancy which is used for...***

**Bill 8-14 Buildings – County Buildings – Clean Energy Renewable Technology**

8-54. Definitions

To modify line 22:

*Director means the Director of the Department or the Director’s designee; or the Director of the agency managing the affected property.*

8-55 Clean energy renewable technology required

To add:

*(d) All historic buildings and any other buildings that are smaller than 100,000 square feet are exempt from this requirement.*

# PRACTICE

No. 6-40

Approved by  
The Commission

Initially issued: 11/1/76  
Last amended: 11/19/2012  
Last reviewed: 11/19/2012

## M-NCPPC Sustainability Standards

- AUTHORITY** This Administrative Practice was initially approved by the Executive Committee at its meeting on October 4, 1976, and last amended by the Commission on November 19, 2012.
-   
Patricia Barney, Executive Director
- RESCISSION** The Practice, as amended on November 19, 2012, updates and replaces all other internal sustainability procedures.
- PURPOSE AND BACKGROUND** This Practice (originally titled Commission Resource Conservation Program) was initially established to communicate agency-wide policy on the conservation of utilities sources, such as electricity, natural gas, fuel oil, and motor fuel. The Practice was revised on November 19, 2012 to update and replace initial measures through a broader understanding of sustainability standards, which benefit the environment, our workplace, and the communities we serve.
- The Practice, as originally approved, has been revised as follows:
- May 1, 1979 and January 9, 1980: Incorporated updated responsibilities due to agency restructuring.
  - November 19, 2012: Policy amended to:
    - Reflect more modern concepts in the area of sustainability, including:
      - Green building management strategies which meet nationally accepted sustainability certifications for energy conservation and use of renewable resources;
      - Procurement of goods and services aimed at high efficiency products and other sustainable practices;
      - Implementation of green development strategies in community planning, landscape design and other site planning;
      - Elements aimed to foster ongoing awareness among our employees and patrons on sustainability objectives and programs; and
      - Updated County and State sustainability mandates.
- REFERENCES** Federal/State/Local Standards:
- Maryland Stormwater Management Act of 2007 and accompanying Environmental Site Design Standards
  - Maryland Code, State Finance and Procurement, § 5-312, High Performance Building Act

- Prince George’s County Executive Order 22-2007, Goes Green Program
- Prince George’s County Energy Policy
- Montgomery County Bill 32-07, Environmental Sustainability Climate Protection Plan
- Montgomery County Code Section 18A, Energy Policy—Regulations
- Montgomery County Resolution 16-757, County Energy Policy (with reference to Interagency Committee on Energy and Utilities Management)
- Leadership in Energy and Environmental Design Certification Standards as issued by the United States Green Building Council
- Standards and Guidelines for Sustainable Sites (United States Sustainable Sites Initiative)
- Maryland Sustainable Communities Act of 2010

**M-NCPPC Policies:**

- Administrative Practice 4-10, Purchasing Policy
- Administrative Practice 2-18, Work-Life Program and related Administrative Procedures including:
  - 95-02, Compressed Scheduling
  - 95-04, Telework
  - 03-02, Alternative Commuting Resources

**APPLICATION**

This Practice applies agency-wide.

**DEFINITIONS**

**Chlorine-free Processing:** Paper is whitened without the use of chlorine in the process (PCF), eliminating production of chlorinated toxic chemicals and dioxins in processing wastes.

**Energy Star:** The Department of Energy rating for appliances and building products that minimize the use of energy.

**Environmental Site Design (ESD):** Using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

**Forest Stewardship Council (FSC) Certification:** A third-party guarantee that wood products, including paper, are harvested from a certified sustainably managed forest.

**Green Practice:** The wise use of resources, conservation, and innovative environment-friendly designs that create or enhance sustainability.

**Greenhouse Gas (GHG):** A gas that increases the atmospheric reflection of infrared heat emissions from Earth’s surface, measured in carbon dioxide equivalent.

**Leadership in Energy and Environmental Design (LEED)**: A building certification system designed by the U.S. Green Building Council (USGBC) that promotes design and construction strategies aimed at improving environment and resource stewardship. The tiered standards, which use Certified, Silver, Gold, and Platinum, vary by project type and are made available at USGBC.org.

**Net Metering**: Net metering is a policy that allows a solar-system owner to receive credit on his/her electricity bill for surplus solar electricity sent back to the utility.

**Post-Consumer Recycled Content**: Contains material that was consumed in a final product and then recycled.

**Renewable Energy Certificate**: Also known as “Green Tags” and “Green Certificates” is a tradable, non-tangible energy commodity that represents proof that one megawatt-hour of electricity was generated from an eligible renewable energy resource. Renewable Energy Certificates provide organizations a convenient way to purchase renewable energy, offset carbon emissions, and encourage clean energy development.

**Smart Growth**: Urban planning that supports efficient and sustainable land development and utilizes redevelopment that optimizes prior infrastructure investments. Smart growth incorporates strategies such as mixed-use urban centers that support and enhance public transit; promote walking and bicycling, provide for a range of housing and retail options, and consume less land that can be preserved for open spaces and natural systems.

**Sustainable Sites Initiative (SITES)**: A rating system, similar to LEED developed by the American Society of Landscape Architects, that establishes voluntary national guidelines and performance benchmarks for sustainable land design, construction and maintenance practices.

**Sustainability**: Creates and maintains the conditions under which humans and nature can exist in productive harmony, and preserves resources so that they are not depleted or permanently damaged.

**POLICY**

The M-NCPPC is committed to stewardship of the environment, our community, and the workplace through the implementation of sustainable practices that preserve natural and economic resources, reduce waste and consumption, reduce the carbon footprint, promote green practices in our facilities and programs, and support the wellness of our employees and community.

Sustainability efforts shall increase the value or longevity of services while reducing reliance on resources and the negative effect on health or the environment.

The goal of this agency is to lead and implement meaningful sustainability initiatives. The sustainability goals outlined in this Practice are to be carried out as an agency, wherever feasible, and implemented within each department. The feasibility analysis of initiatives should consider the following:

- The prudent use of public dollars;
- The availability of green materials/services;
- The ability to maintain or improve existing service levels and safety; and
- The ability to safeguard the integrity of facilities/structures, including concerns for historic preservation.

These goals are intended to serve as benchmarks that may be further enhanced on a departmental, programmatic, or facility basis. It is recognized that certifications/standards identified in this Practice may evolve over time. The agency shall be guided by the certification/standard requirements that are in place at the time an initiative is being designed.

To implement this policy, each Department shall generate a Sustainability Plan that explains how goals identified in this Practice are being implemented for its respective facilities, operations or services. These Plans shall be presented to the Executive Committee by September 2013 and updated at least every two years.

The agency's sustainability efforts under this Practice also will be supported through a Sustainability Committee comprised of representatives from each department. The Committee shall: ensure coordinated efforts for agency-wide initiatives wherever practical; share ideas and expertise for the implementation on sustainability goals on a departmental level; prepare a Sustainability Report to the Commission that describes initiatives implemented throughout the agency, and recommend new or revised goals to ensure that the M-NCPPC stays at the forefront of sustainability practices.

Specific requirements for development of Sustainability Plans and reporting results to the Executive Committee and Commission are outlined in the Section titled Responsibilities. The following goals and objectives are designed to guide implementation of this Sustainability policy.

- I. **Utility/Energy Conservation:** Conserve natural and fiscal resources by eliminating waste, improving efficiency, reducing the consumption of energy, and increasing the use of renewable sources of energy. Whenever feasible, new appliances and building materials shall meet Energy Star or equivalent rating for high efficiency and energy conservation. This should be in addition to also considering other environmental attributes such as recyclability and applicable federal/state safety and building code requirements.
  - A. **Utility Measurement and Monitoring**
    1. Department sustainability coordinators shall collect utility use information to develop/enhance utility management standards and track the cost of each facility's utility consumption over time.

2. Utility consumption trends shall be made available to facility managers and Department Directors to evaluate and refine utility and cost saving practices.
3. Managers who operate buildings or spaces leased by the M-NCPPC should work with the facility owners to include utility metering or reporting for the leased space(s).

**B. Conservation of Electricity and Natural Gas**

1. In addition to established internal maintenance programs, departments should pursue grants for energy efficiency studies, upgrades, and retrofits for planned and existing facilities.
2. All M-NCPPC facility managers should seek to meet Leadership in Energy and Environmental Design (LEED) Volume Program for Operations and Maintenance, or LEED for Existing Buildings: Operations and Maintenance criteria, for at least a Silver or equivalent rating standards for operations and maintenance. These standards are issued by the U.S. Green Building Council which can be accessed through its website ([www.usgbc.org](http://www.usgbc.org)).
3. Where practical, indoor and outdoor lighting fixtures shall be programmable or linked to occupancy or motion sensor(s).
4. Light emitting diodes (LEDs), daylight fixtures, or other efficient low-energy lighting solutions should be used in place of incandescent, halogen, or fluorescent lights, where practical.
5. By 2020, the agency through coordination with the Department of Finance, will strive to meet a target whereby 40% of its electricity is produced or supported through renewable energy sources. These sources may include, but are not limited to, the purchase of Renewable Energy Certificates, onsite generation of energy from renewable sources (such as wind, solar, geothermal, water, etc.), and/or the acquisition of renewable energy from utility companies. This target may be adjusted by the Executive Committee with input from the Secretary-Treasurer based on fluctuating costs and availability of renewable energy sources.
6. Renewable sources (such as solar, wind and geothermal) should be considered for new and replacement systems where life cycle cost savings are justified in addition to aggregate net metering or power purchase agreements, among other financing or contract mechanisms, to further reduce the Commission's carbon footprint with its energy use, save costs, and further promote clean power alternatives wherever practicable.

**C. Conservation of Water**

1. Install and properly maintain automatic faucets, where practical.
2. Whenever feasible, utilize low flow toilets and other innovations to reduce water demands.

3. Investigate and where feasible, install an efficient infrastructure for use of rainwater or grey water at M-NCPPC facilities, including water amenities and landscape watering.
4. Upon learning of any abnormal water usage pattern, facility managers shall investigate, locate, and immediately repair any leaks and inefficiencies.
5. Strive to plant native trees and shrubs in landscaping.
6. Strive to reduce lawn areas to minimize the need for irrigation and plant areas with appropriate drought tolerant native species.

**D. Management of Heating, Ventilation, and Air Conditioning (HVAC) Systems**

Whenever feasible:

1. Insulate exposed piping and ventilation ducts in accordance with at least LEED Silver or equivalent standard.
2. Integrate installation of high efficiency HVAC equipment in new construction or in replacement plans for existing equipment, such as Energy Star or equivalent.
3. Use programmable thermostats to minimize HVAC use when buildings are not in use.
4. In the planning of new buildings or major renovations to existing buildings, review insulation specifications to meet LEED Silver or equivalent standards.

**E. Fleet Management and Use of Alternative Commuting Resources**

1. Employees utilizing M-NCPPC vehicles are encouraged to carpool with other employees to conserve fuel, minimize operating costs, and reduce environmental impacts related to pollution and congestion.
2. Fleet managers shall assist Departments in assessing the functional use/need of vehicles based on assigned work program needs, and recommend vehicle purchases to most effectively meet these needs to include factors such as fuel/energy efficiency, safety, and effective operation. All new vehicle purchases shall consider the most energy efficient options suitable to meet the indicated use for the vehicle.
3. Vehicle assignments shall ensure the most efficient use of the agency's fleet.
4. To maintain highest operating efficiency, fleet managers should ensure that all vehicles receive periodic maintenance consistent with manufacturer specifications.
5. Reduce impact of employee travel to and from M-NCPPC facilities by implementing the following strategies:
  - a) Implement feasible options and/or incentives to encourage staff's use of public transportation, regional commuting resources (e.g., ride share and car pools), and internal programs such as departmental pool vehicles and vanpools.

- b) Establish and encourage carpooling by M-NCPPC employees, allocating reserved spaces for carpoolers.
- c) Encourage the use of alternate work arrangements such as Telework and Compressed Workweeks to reduce, among other things, environmental impact and costs/needs associated with workspace operations.
- d) Capitalize on meeting and conferencing technology by using more phone and video conference calls (including webinars for training), even locally, to cut back on use of vehicles and travel times.

**II. Sustainable Acquisition and Use of Agency Supplies:** Develop procurement specifications that encourage the use of goods and services which support the agency's commitment to sustainability in areas including, but not limited to, resources conservation, protection of the environment, and workplace health and safety.

**A. Office Supplies and Furniture**

- 1. Actively reuse office supplies whenever possible, maintaining a returned inventory of supplies for reuse.
- 2. Durable office equipment, including furniture, should be considered for reuse or repurpose by other M-NCPPC facilities/operations before it is recycled/surplused/or disposed.
- 3. All disposal or external surplus/recycling of M-NCPPC property shall be coordinated with the Department of Finance, Purchasing Office, to ensure adherence to legal dispossession of assets, with a preference placed on repurposing outside M-NCPPC for the benefit of the community.
- 4. Where feasible, identify and use environmentally friendly cleaning supplies/other products and services that are effective, enhance worker safety and health, and meet or exceed federal/state safety requirements.

**B. Printing and Copying**

- 1. Utilize two-sided printing whenever one-sided printing is not necessary.
- 2. Limit use of color copying/printing to reduce costs and resources.
- 3. Unless specific job demands or technical specifications of a printer require otherwise, purchase and use 100% post-consumer recycled paper, preferably with chlorine-free processing.
- 4. Purchase of papers containing less than 100% post-consumer content should be limited to those that are Forest Stewardship Council (FSC) Certified.
- 5. Incorporate other practical measures to reduce print material such as e-signatures, document imaging, and other paperless means of doing business.

**C. Procurement**

- 1. Procurement policies shall incorporate sustainable purchasing guidelines to secure economies of scale and promote sustainable product and service offerings by vendors. (See, for example, the Environmental Protection Agency's list of greener products that promote resource conservation, efficiency, safer

alternatives, and, recycled content and recyclability, among other factors, in addition to other, similar sources. See also Section I.B., Conservation of Electricity and Natural Gas.)

2. Purchases should be combined whenever reasonable to reduce deliveries to minimum essential requirements, to save costs and energy where possible.
3. In cooperation with the Chief Information Officer, departments should create and sustain an efficient information technology (IT) infrastructure that supports operational needs while increasing paperless options for reviewing and storing information, and using environmentally preferable and energy efficient equipment including computers, printers, copiers, document imaging systems, servers, etc.).

**III. Recycling and Solid Waste Management:** Implement projects and programs to recycle, reuse, and reduce solid wastes used by M-NCPPC employees and patrons to meet or exceed the regulatory mandates established by government regulations. Recycling and disposal of materials shall comply with relevant federal/State safety regulations.

- A. Implement recycling and reuse programs to achieve an overall rate of 90% of recyclable materials mandated by state or local law (including mixed paper, commingled materials, yard trim materials, Christmas trees, and scrap metal).
- B. Implement recycling and reuse programs to include other material to include but not be limited to oils, batteries, asphalt, tires, furniture, computers, electronics, construction debris, etc.
- C. Implement programs to recycle and reuse plant, tree, and related vegetation materials to include composting within the natural resources of the agency.
- D. Develop community-based information programs to encourage, demonstrate, and educate patrons on best practices to recycle, reuse, and reduce solid waste at M-NCPPC facilities/programs.

**IV. Sustainable Infrastructure and Natural Areas:** The M-NCPPC will utilize the national and State standards for green practices in the design of facilities and in the management of natural resources. Natural areas will be managed to maintain healthy ecosystems and maximize biodiversity.

**A. Sustainable Building - Whenever feasible:**

1. All new construction of M-NCPPC buildings shall be at least Leadership in Energy and Environmental Design (LEED) Silver eligible or equivalent standard.
2. Major renovation of M-NCPPC buildings shall meet at least LEED Silver eligibility or equivalent standard.
3. Capital improvement plans shall include implementation of LEED or equivalent standards in construction and renovation.

4. When planning new office sites, consideration should be given to locations that offer access to public transportation resources such as metro rail, trains, buses, and carpools.

**B. Sustainable Site Work - Where appropriate:**

1. Capital improvement plans shall include implementation of the Sustainable Sites Initiative (SITES) or equivalent standards (such as LEED) in construction and renovation.
2. Plant native trees and shrubs around agency-owned buildings to provide wind and summer sun shelter.
3. Utilize appropriate site layout, landscaping, and material choice to reduce heat island effect and summer cooling costs.
4. Use best practices including, but not limited to, current environmental site design standards to avoid, trap, and control erosion or surface runoff of detergents, fertilizers, pesticides, and soil into storm drains and surface waters.

**C. Natural Resources Management:**

1. Develop and implement a Natural Resources Management Plan for all parklands acquired for conservation purposes by 2012. This Plan provides general guidance to park management staff for the management of natural areas in parks.
2. Maintain, and expand as appropriate, the existing program for the inventory, assessment, and control of non-native and invasive (NNI) plants.
3. Maintain, and expand as appropriate, the existing program for the control of nuisance wildlife (e.g. White-tailed deer, Canada geese, etc.)
4. Utilize integrated pest management practices, where effective.
5. Maintain, and expand, as required by State regulations, the storm sewer system, and the monitoring of water bodies and restoration of watersheds within the park system.

**D. Community Planning and Development:**

Where possible and practical, Community Planning and Development shall:

1. Plan and locate new development according to Smart Growth principles and in conjunction with Maryland Sustainability initiatives.
2. Locate recreation facilities to afford access via public transit and trails networks.
3. Co-locate community recreation centers and major recreation facilities with other public facilities.

- V. Health & Wellness:** Promote safety, health, and wellness through our workplace, programs, and services.

- A. Support healthy communities by integrating sustainability concepts and green practices with relevant program offerings, to further enhance patron and employee well-being.
- B. Raise awareness of workplace health, safety, and wellness issues through comprehensive training and education programs targeting illness and injury prevention.
- C. Mitigate workplace hazards through timely identification, investigation, and remedial action. Whenever reasonable, complete collaborative reviews of accidents and design new programs to encourage greater understanding of risks and actions to implementation.

**VI. Employee Education & Training on Sustainability Goals**

- A. Sustainability efforts will be fostered through agency-wide promotion and education of environmental awareness and conservation.
- B. Employees should be encouraged to seek sustainability credentials appropriate to their work program.
- C. Supervisors are responsible for reviewing work program requirements as they pertain to implementation of sustainability efforts. Applicable sustainability goals are to be incorporated into employee performance expectations.

**RESPONSIBILITIES**

The following responsibilities are assigned for the overall administration of the agency's sustainability policy. Responsibilities may be delegated as appropriate.

**Department Directors shall:**

- Ensure compliance with this policy.
- Develop a departmental bi-annual Sustainability Plan that shall be presented to the Executive Committee by September 2013 to outline initiatives for the upcoming two-year period. The Sustainability Plan shall be reviewed and presented every two years.
- Following the first year of implementation of the Plan, Department Directors shall report of the status of achieving sustainability goals and objectives outlined in this Practice and in the departmental Sustainability Plan.
- Designate one or more employees to act as the departmental Sustainability Coordinator(s) and serve as the representative(s) to the agency-wide Sustainability Committee.

**Departmental Sustainability Coordinators shall:**

- Serve as the departmental liaison to the Sustainability Committee and as the point of contact and clearinghouse for all sustainability-related issues for the M-NCPPC.
- Assist the Department Director in preparing the departmental Sustainability Plan that meets, at a minimum, the sustainability goals and objectives set forth in this Practice.
- Communicate goals outlined in the departmental Sustainability Plan to all operations/facilities and provide support for implementation of the Plan.

- Collect data and perform analyses to monitor and assess ongoing progress on meeting standards and complying with guidelines.

**Sustainability Committee shall:**

- Share ideas for implementation of sustainability goals throughout the agency and on a departmental level.
- Promote sustainability awareness within M-NCPPC and the region.
- Recommend to Department Directors, and develop/implement approved communication tools to educate the workforce and the community on sustainability goals, initiatives, and progress.
- Recommend to Department Directors, new or amended initiatives to comply with the goals outlined in this Practice.
- Prepare a Sustainability Report to the Commission that describes the initiatives that have been implemented throughout the agency.
- Strengthen information exchange with intergovernmental relationships in the area of sustainability (e.g., Council of Governments, County/State agencies, local municipalities) and, where relevant, explore opportunities to promote cooperative partnerships and complementary cost-savings with potential implementation of various measures with or across organizational boundaries.



*THE VOICE OF MONTGOMERY COUNTY BUSINESS*

**MONTGOMERY COUNTY COUNCIL  
PUBLIC HEARING**

**BILLS 2-14 THROUGH 12-14**

**FEBRUARY 10, 2014**

As a Chamber of Commerce that recognizes the economic and environmental imperative of greening the way we do business, we commend the County Council for the intent of this package of bills. We believe that positioning our county as a place to do green business is a compelling competitive advantage in today's marketplace. Supporting a green infrastructure is critical, as is growing the number of green jobs that are created to meet the needs of the new marketplace.

There are, however, areas of concern with regard to the package. Below are specific comments on a few of the bills. Broadly speaking, the fiscal impact statements will likely address the costs associated with the various activities. It will be important to review these so as not to impose undo burden as we try to move the marketplace. Where possible, incentives should be deployed to encourage adoption of new practices and attainment of environmentally sustainable goals. We would also like to see these bills work in concert with other county regulations so there is not confusion in following or enforcing the regulations.

We see green as part of a larger economic development strategy for the county. The Green Business Certification program is a terrific example of the business community working in partnership with the Department of Environmental Protection and Montgomery College to achieve environmental goals through a voluntary program. We look forward to working with you, the County Council, to make sure this package is able to realize the stated intention of addressing climate change at the local level to the greatest extent possible.

Comments on specific bills:

**Bill 7-14 Contracts and Procurement -Certified Green Business Program**

We applaud the County Council for recognizing the Montgomery County Green Business Certification Program and finding ways to incentivize those companies interested in working with the county to participate. We encourage the county government - or units within it - to become "Green Certified" and to green its own supply chain by using environmentally preferable purchasing of products and practices where appropriate. There is a green procurement bill requested by DGS (HB 629) pending at the state which could serve as a guide.

According to the information provided by the Council staff, "The goal is to encourage businesses to develop strategies for protecting the environment in their day to day operations." If the goal is

indeed to encourage more businesses to adopt green practices internally (such that they can be certified by Montgomery County or another comparable entity), the county may also want to explore using one or more of the many tools available outside of the county procurement process and appropriate to all businesses to incentivize that initiative.

Coincidentally, there is also a bill in the General Assembly that focuses on creating Green Business Incentive Zones (HB 473/SB 787) which also encourages the growth and success of this new market player by offering incentives such as tax credits.

This bill, as drafted, uses the procurement process and the opportunity to gain preference as an incentive. The procurement process is complex. Any modification to that process should be to make it easier to do business with the county. We are concerned that by restricting the language to "percentage price preference" companies that do have the right products or services, but have not met the green business certification preference, may be at a disadvantage that ultimately undermines the overall effort to reduce our collective ecological footprint. Therefore, we suggest reviewing the ways that the procurement process can be used effectively, perhaps by including green certification in the evaluation criteria or as a "tip over." This may more effectively encourage companies to green themselves without inadvertently making the procurement process more cumbersome and ultimately counter-productive in meeting the goal. It is worth noting that "percentage price preference" language was struck from HB 629 mentioned above.

#### **Bill 2-14, Environmental Sustainability - Buildings - Benchmarking**

To the extent that buildings are a critical piece of the climate puzzle, it is important to understand energy usage and work to conserve where we can. That being said, we encourage the Council to look to federal regulations as many tenants in the county are federal offices or contract with the federal government. Therefore, any new requirements for owners and/or tenants should conform to federal standards.

Second, we firmly believe that if the county requires benchmarking of private property owners, the county must be able to participate in the program as well. Taxpayers should know the efficiency of the buildings they are paying to operate. Last, for those older buildings that will be among the least efficient, the program must provide some process to help with mitigation, whether it be providing priority for county programs or other education and incentives to address problems.

#### **Bill 5-14, Environmental Sustainability - Social Cost of Carbon Assessments**

It is unclear, based on our reading of this bill, how the EPA method that was developed for regulations/legislation would be applied to Capital Improvement Projects or energy efficiency improvements in general. It is also unclear how information gleaned from the calculation would be used to reach any conclusion on the viability of a project.

**Bill 6-14, Environmental Sustainability - Office of Sustainability - Established**

Based on the bill as written, this new office would record and manage the county's greenhouse gas emissions. We see Montgomery County's position as a leader in sustainability as a driver of economic development. We therefore believe that this effort should include an economic development component as well as clear coordination with the extensive land use and transportation work that happens throughout the county government and with Park and Planning. In addition to producing an annual report, there should be some demonstrable gain to county taxpayers to justify the creation of a new office, which will require additional staffing and new responsibilities.

With regard to the remaining bills that are part of this package, we would encourage Council Members to be mindful of hidden costs and unintended consequences that may arise from the adoption of some of these bills. We hope that the fiscal impact statement will speak to some of these and that the committee work sessions will be constructive and produce useful information.

As mentioned at the outset, we see green as part of a larger economic development strategy for the county. We look forward to working with you to make sure this package is able to realize the stated intention of addressing climate change at the local level to the greatest extent possible.



12200 Tech Road, Suite 250, Silver Spring, MD 20904 • Phone: 301-622-2400 • Fax: 301-622-2800 • www.MHPartners.org

February 21, 2014

The Honorable Craig Rice  
President, Montgomery County Council  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Council President Rice:

On behalf of Montgomery Housing Partnership (MHP), we applaud the Council's effort to encourage energy efficiency in the County. MHP has been designated a Green Organization by NeighborWorks America, a national organization of community development organizations. MHP has employed the Enterprise Green Communities standards in development of our affordable housing developments since 2008, has instituted programs with our residents to increase their level of environmental stewardship, and institutes various green practices in our offices.

As you consider these energy related bills, we would respectfully request the Council consider the following issues:

**Bill 2-14**

As owners of many older buildings, we agree that benchmarking is a critical to achieving the highest energy savings. However, we feel the action steps in this bill are premature. We recommend the County set up a working group of existing building owners, tenants, and the utility companies to determine the most effective way to encourage, support and afford energy re-commissioning. Especially with individually metered multi-family buildings, we have struggled in the past to effectively collect the necessary data to accurately benchmark our buildings and plan appropriate, and effective energy re-commissioning renovations. We feel that the better approach is to mandate the utility companies, who already have the data, to share this data with the property owners. Additionally, as noted, benchmarking is the most effective for older buildings that have not already undertaken extensive energy improvements. However, to re-commission these buildings is not only an expensive process, but disruptive to the existing

tenants. We encourage the Council to explore the creation of a fund to assist nonprofits and small businesses undertake retro-commissioning.

**Bill 3-14**

We respectfully request that the Council amend the bill to exclude projects that are solely or partly funded by the Department of Housing and Community Affairs (DHCA), and allow the energy standards for these projects to be selected at the discretion of the Director of DHCA. This would enable DHCA to set standards that are more applicable to affordable housing developments, taking into consideration the multi-family and affordable components of the project. The State has highlighted many of these programs, including Enterprise Green Standards, in the 2013 Qualified Allocation Plan for the administration of Low-Income Housing Tax Credits. LEED Silver usually adds at least a 10 percent premium to construction costs – a significant amount in any project, but even more so in affordable projects where we are already working to stretch every available dollar. This premium will force us to seek additional dollars from the County and reduce the number of affordable units we're able to construct. To be clear, we are not attempting to skirt our obligation for environmental stewardship, we are looking for the flexibility to ensure the standards chosen are in line with the project. As mentioned previously, since 2008 we have been using the Enterprise Green Communities standards to inform and direct our projects.

I welcome the opportunity to discuss these thoughts with you further. Please feel free to reach me at [rgoldman@mhpartners.org](mailto:rgoldman@mhpartners.org) or 301-812-4114.

Sincerely,



Robert A. Goldman, ESQ.  
President

6

## Testimony Before the Montgomery County Council

### In Support of Bill 2-14, Environmental Sustainability – Buildings – Benchmarking

**Patrick Hughes**  
**Policy Director for High-Performance Buildings**  
**National Electrical Manufacturers Association**

**February 11, 2014**

#### **Introduction**

Good evening, my name is Patrick Hughes and I am the Policy Director for High-Performance Buildings at the National Electrical Manufacturers Association. I am pleased to be here tonight to speak in support of Bill 2-14, which would establish energy benchmarking requirements for large commercial buildings in Montgomery County.

The National Electrical Manufacturers Association (NEMA) is a non-profit organization representing more than 400 manufacturers of electrical equipment with annual revenues of more than \$100 billion annually. Many of NEMA's members have manufacturing facilities in Maryland and operations in Montgomery County, including Schneider Electric's Telvent subsidiary based here in Rockville. Other major companies, such as the lighting manufacturer Osram Sylvania and Rockwell Automation, have facilities just over the county border in Columbia, but employ Montgomery County residents.

#### **Support for Bill 2-14, Environmental Sustainability – Buildings – Benchmarking**

NEMA's members manufacture the products that make buildings more energy efficient, including energy-efficient lighting, efficient motors that drive elevators, escalators, and the fans that run heating and air-conditioning systems, as well as thermostats, occupancy sensors, and other building controls that can help building owners and occupants save energy and money and reduce greenhouse gas emissions. Energy efficiency improvements like these support local construction and manufacturing jobs – in fact, similar benchmarking and disclosure ordinances in New York City and San Francisco resulted in a 30% boost in business for local energy companies. So by investing in energy efficiency, this bill is also helping to bolster Maryland's economy.

NEMA and its members support the proposed bill because it would increase transparency within the real estate market as to the true cost of owning and operating a building. No one here would buy a car without first knowing its miles-per-gallon rating, but we do that all the time with buildings. The cost of operating a building is roughly five times more than its initial construction cost, yet information about how the energy use of two different buildings compares is largely hidden from the market. This ordinance would fill that information gap, allowing prospective buyers and renters to understand the full cost of operating and occupying a building.

Energy benchmarking has been shown to be an effective means of reducing energy waste in buildings. The U.S. Environmental Protection Agency, which manages the ENERGY STAR

Portfolio Manager tool, issued a report in 2012 that showed that, on average, buildings that benchmarked reduced their energy use by 7% over three years.

But benchmarking and energy efficiency have benefits beyond simply reducing energy bills. Studies have shown that buildings with ENERGY STAR labels sell for a premium of 8-25% more, rent for 2-14% more, and are 3-11% more fully occupied than their non-ENERGY STAR certified peers. In addition, energy efficiency can increase the reliability of the electric grid by reducing congestion and strain during periods of peak demand, reducing the likelihood of brownouts and blackouts – an important benefit for many Montgomery County residents.

In conclusion, NEMA and its more than 400 members believe that energy use should be transparent, and we support this bill because it will do just that. As the old saying goes, you can't manage what you can't measure, so by requiring large buildings to measure and report their energy use, building owners will naturally begin to manage energy inefficiencies, and potential buyers and renters will be able to make informed decisions about the buildings they choose to live and work in.

## Montgomery County

Finding ways to better share monthly aggregated energy data with building owners/operators is critical to understanding and improving building performance across our region. But it's easier said than done, since it requires cooperation among industry stakeholders. On October 30, the USGBC-NCR Montgomery County Branch convened a group of local stakeholders, including building owners, utilities, governments and advocacy groups, to discuss ways to improve the flow of building data in Montgomery County, MD.

There are several structural constraints and obstacles that prevent utilities from providing actionable energy data to building owners. In many cases, utilities across the country do not have the technical infrastructure or staff resources in place to provide aggregate energy usage data to building owners. However, building owners have market-established tools at their disposal, like the Environmental Protection Agency's Portfolio Manager, which they can use to track building performance. Additionally, utilities must meet rules and regulations of state public utility commissions, which can unintentionally create additional barriers to how utilities are able to share data. Many of these restrictions are related to privacy concerns associated with sharing individual tenant data.

The Montgomery County Energy Summit, sponsored by the JBG Companies, Pepco and Boland, brought experts together to discuss the barriers and explore solutions for improving access to aggregated energy building data. Access to this critical data will empower building owners to make smarter energy decisions and better enable benchmarking of public and commercial properties, ultimately helping improve performance and reduce energy usage. The summit brought together local utilities and commercial real estate owners and operators, including local staff from Pepco, Baltimore Gas & Electric, The Tower Companies, Brandywine Realty Trust, Akridge, and First Potomac. Additionally, the summit drew several Maryland state and Montgomery County officials and local advocacy groups to discuss the current barriers to sharing energy data and opportunities to improve this process.

Dialogues like the one in Montgomery County show that private sector stakeholders can have a unified voice in support of improved data sharing policies. While the County is considering a benchmarking and disclosure law, USGBC-NCR's Montgomery County Branch believes proactive conversations on data access between all interested parties is the most effective way to ensure cooperation and the establishment of best practices in pursuit of energy efficiency.

For that reason, the Branch has formed a working group to continue discussing opportunities to improve access to utility data. For more information on becoming part of the group, please contact us.



Montgomery  
County  
Branch



## ENVIRONMENTAL BILLS (2-14 THROUGH 14-14) RESPONSES:

The USGBC NCR Montgomery County Branch has had the opportunity to review the packet of energy and environmental measures proposed by Councilmember Roger Berliner and many of his colleagues.

We believe revised language within the thirteen proposed bills is required to provide clarity, using lessons learned from other jurisdictions, which have hastily adopted legislation without fully understanding the fiscal impact or administrative barriers. Over time those jurisdictions have been forced to correct issues and have consequently wasted resources, while frustrating residents and businesses. While some of the proposed legislation may have a small impact, others might have a much larger price tag.

The true impact on Montgomery County for implementing the proposed legislation should be assessed taking into account the diversity of our county. We have environments that range from urban to rural. The future plans for growth incorporating recommendations from organizations and agencies such as USGBC, Maryland Energy Administration (MEA), Department of Energy (DOE), and many others that are well versed in these issues. We recommend the County Council allow time for discernment and discussion of concerns among its stakeholders prior to taking a position on these bills.

In regards to the specific proposed bills we have the following comments:

### **Bill 2-14 – Environmental Sustainability – Buildings - Benchmarking.**

The USGBC NCR Montgomery County Branch had an Energy Data Sharing Summit in October 2013 to discuss this issue with many key stakeholders like County, State, and Federal Agencies, utilities, property owners, technical experts, other local jurisdictions, and industry professionals. Through this forum we have identified the following issues to be addressed prior to implementing required benchmarking of buildings in our county:

- Benchmarking requirements should first apply to County owned and leased buildings and the information should be publically available. Once the county can show they have worked through administrative issues then it would be appropriate to roll out to the private sector.
- Energy auditing and retro commissioning is expensive and the industry does not have a pool of adequately trained professionals to fulfill this requirement. However, new data access & analysis technology will reduce the cost of audits and retro commissioning and facilitate ongoing virtual building performance monitoring.
- Data provided by the utility companies must be in a clear and consistent format and be flexible to allow for automatic uploading to uniform platform such as ENERGY STAR, DOE/ASHRAE smart meter interfaces, etc.
- The benefits to data access are known by the industry and the first step is getting the needed data from the utilities. Utility commissions and elected officials should coordinate on data access so that utilities and building owners have clarity on how data should be tracked and presented to eliminate privacy concerns and still provide usable data to owners. Condo communities with one master meter are common in the County. Enhanced access to meter data would be helpful, but many have expressed interest in cost effective solutions to sub-metering.
- Pepco is currently aware of this issue and is providing aggregated data, directly uploaded to ENERGY STAR in the District of Columbia, following the Sustainable DC II Legislation.

The key findings regarding Bill 2-14 is there will be a fiscal impact for businesses in terms of benchmarking and the required energy audit. The cost to property owners should be assessed and determined if the financial burden is reasonable prior to passage of the bill. There may be opportunities for incentives to help with implementation for small businesses in our county. They have not taken advantage of existing state incentive dollars due to a distrust of the current program. This is attributed to the complexity of the process and experiences of other business owners where misinformation and errors have increased cost instead of saving money.

#### **Bill 3-14, Buildings - Energy Efficiency - Energy Standards**

- The bill should focus on moving toward a sustainability code solution like the IgCC or ASHRE 189.1 with modifications to coordinate with current codes and regulations.
- Offering a multiple compliance path option between LEED V3, IgCC, or ASHRE 189.1 should be allowed until the codes have been better coordinated.
- Significant issues have arisen in jurisdictions where new codes conflicted with existing regulations.
- The County should conduct an industry impact study to fully understand the economic impact to businesses, our community and county agencies. The intent of this regulation should show a leadership path for a successful sustainable future.

#### **Bill 4-14 Streets and Roads - County Street Lights**

- The county should allow an appropriate engineering solution for each location, along with Life Cycle Assessment, to determine the most effective lighting solution in lieu of a straight LED requirement.
- This alternative allows for site specific engineering solutions, for location effectiveness and efficiency, not merely complying with a regulatory requirement.
- Lighting technology is consistently changing and any legislation should be adaptable to the future changes.

#### **Bill 8-14 Buildings - County Buildings - Clean Energy Renewables**

- This bill should be a goal; not a mandate. A better solution is to consider the life cycle cost effectiveness of this requirement and how it would be implemented by county capital construction and operated and maintained by the county staff.
- Most buildings will not be able to meet this goal along with other building regulations; such as storm water management, HVAC systems, etc.
- Long term monitoring and maintenance of these systems is challenging and there is a high risk of failure.
- The cost ratio of meeting the renewable requirements to the total project cost is very high and competes with overall county efforts to limit capital building spending, posing financial problems for many county projects.
- County agencies have experience with Power Purchase Agreement (PPA) where a private entity owns and operates much larger systems. Although this has met with some success, the current PPA financial climate has made building size systems less than attractive to PPA providers.  
An alternative compliance path may be to allow purchasing renewable energy credits (REC), which are currently available and comply with the current legislated mandate. The county agencies are currently required to purchase at least 20% of their annual electrical load in REC's.

Thank you for the opportunity to comment on these bills. We may have further comments as additional discussions and comments identify other impacts.

## **Bill 2-14, Buildings – Benchmarking DEP Review and Recommended Amendments**

On January 28, 2014, the County Council introduced Bill 2-14, Environmental Sustainability - Buildings – Benchmarking. As described in the introductory packet, this bill “would require the owners of certain buildings to benchmark the energy use of certain buildings and retro-commission certain building systems to improve their energy efficiency. Modeled after laws in New York, Chicago, and the District of Columbia, Bill 2-14 would require building owners to measure the energy efficiency of their buildings, make that information public, and periodically commit to assuring that their energy efficiency equipment is working properly.”

The CE has expressed his support for the general intent of Bill 2-14. Benchmarking and public disclosure ensures that building owners, managers, tenants and others involved in commercial real estate are aware of the energy performance of buildings. Numerous studies have shown that higher performing buildings have higher occupancy rates, command higher rents, and sell at a premium when compared to similar buildings.

Based on information from Councilman Berliner, we understand the bill will be amended to remove the requirements related to auditing and retro-commissioning. The CE supports these changes. While DEP believes that these activities can provide great benefits to building owners and managers, it is appropriate to begin with benchmarking in order to understand characteristics of the County’s commercial building stock, and give building owners the opportunity to pursue these activities voluntarily before being mandated by the government. Recommended amendments to the bill that DEP believes would help ensure that a benchmarking program can be effectively implemented in Montgomery County are outlined below.

### Background

Currently, nine cities around the United States have public benchmarking and disclosure laws. The lessons learned in these cities during their benchmarking development and implementation process provide an excellent roadmap for the County to follow. In particular, a study done for the Boston Green Ribbon Commission’s Commercial Real Estate Working Group in 2012 prior to that city’s implementation of its benchmarking law highlights several major findings that should be considered when instituting a benchmarking program:<sup>1</sup>

- Energy Star Portfolio Manager is the industry standard benchmarking tool and has been the basis for all benchmarking programs
- Significant and sustained outreach and education of property owners is key to ensuring that reporting deadlines are met
- Partnerships with leading business and trade associations are a critical part of any benchmarking policy
- Easily accessible utility data is a necessary component for any benchmarking policy and early engagement with utility partners is a key factor to program success

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<sup>1</sup> <http://www.abettercity.org/docs/sustainability/Benchmarking%20report%20-%20Final.pdf>

- Program implementation requires dedicated staff and significant resources
- Building size thresholds should be carefully considered as many smaller building owners may not have the resources to comply with reporting requirements

There is a strong base of experience in Montgomery County to build on when developing a benchmarking program. An analysis of data from the U.S. Environmental Protection Agency's Energy Star Portfolio Manager database on high performing buildings indicates that 101 buildings in the County totaling more than 20,000,000 square feet of floor space already perform in the top 25% of similar buildings nationwide, indicating that many building owners and managers are already benchmarking and focused on the energy performance of their buildings.

### Recommended Amendments

1. Delete Article 7 related to Energy audits and retro-commissioning [beginning on page 8, line 179].
2. Change the definition of *Department* to the Department of Environmental Protection (DEP) [page 3, line 31].
3. Most jurisdictions have taken a "lead by example" approach when implementing a benchmarking program in order to ensure that the process were well understood and any issues affecting a building's ability to comply could be addressed. The implementation schedule should be revised to require the first set of private sector buildings to comply no earlier than one year after the first reporting date for County buildings, subject to the development of a Benchmarking Reporting Protocol (described below).
4. The bill outlines a general benchmarking and reporting process. However, as noted above, there are several key actions that will help to ensure the success of the program, including establishing partnerships with leading businesses and trade associations, conducting extensive education and outreach, and working with utilities to streamline the data access process. The bill should be amended to require DEP to convene a working group, consisting of appropriate County officials, building owners and managers, industry trade associations and non-profit organizations, and utilities. This working group should develop a Benchmarking Reporting Protocol describing in detail how the benchmarking process would work in Montgomery County, including addressing issues of data access, reporting schedules, the applicability of benchmarking requirements to different building types, etc. The Protocol must be developed by [need to determine appropriate date] for approval by the County Council. In the event the Council fails to approve the Protocol, the provisions of Article 6 as drafted would take effect.
5. NOTE: This bill or an amended version of the bill that includes the recommended amendments discussed above cannot be implemented without additional

resources. The Fiscal Impact Analysis for the bill and/or an amended version of the bill has not yet been finalized.

**AMENDMENT**

To Bill 2-14

**BY COUNCILMEMBER BERLINER**

PURPOSE: To (1) modify the reporting deadline for covered buildings; (2) apply the bill only to nonresidential buildings; (3) remove the requirement for certain owners to perform an audit and/or retro-commissioning on certain buildings; and (4) create a Benchmarking Work Group.

*Beginning on page 2, amend lines 20-27 to read:*

1        Covered building means any building owned by the County, Group 1  
2        covered building, or Group 2 covered building[[, as defined in this Article]].  
3        Covered building does not include any building with more than 10%  
4        occupancy which is used for  
5        (1) public assembly in a building without walls;  
6        (2) warehousing;  
7        (3) self storage; or  
8        (4) a use classified as manufacturing and industrial or transportation,  
9        communication, and utilities.

*Beginning on page 3, amend lines 41-47 to read:*

10        Group 1 covered building means any nonresidential building, or any group  
11        of nonresidential buildings that have the same property identification  
12        number, not owned by the County that equals or exceeds 250,000 square feet  
13        gross floor area, as identified by the Director.  
14        Group 2 covered building means any nonresidential building, or any group  
15        of nonresidential buildings that have the same property identification  
16        number, not owned by the County that equals or exceeds 50,000 square feet

17 gross floor area but is less than 250,000 square feet gross floor area, as  
18 identified by the Director.

*Beginning on page 4, amend lines 70-88 to read:*

19 **18A-39. Energy use benchmarking.**

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

23 (b) Group 1 covered buildings. No later than ~~[[June 1, 2014]]~~ December  
24 1, 2016, and every ~~[[June]]~~ December 1 thereafter, the owner of any  
25 Group 1 covered building must benchmark the building for the  
26 previous calendar year. ~~[[However, the owner of any Group 1~~  
27 covered building with at least 10% residential occupancy, as measured  
28 by square footage, must benchmark the building for the previous  
29 calendar year no later than June 1, 2015, and no later than June 1st  
30 each year thereafter.]] The owner must report the benchmarking  
31 information to the Department no later than ~~[[July]]~~ January 1 each  
32 year.

33 ~~[[b)]]~~ (c) Group 2 covered buildings. No later than ~~[[June 1, 2015]]~~  
34 December 1, 2017, and ~~[[no later than June 1st each year]]~~ every  
35 December 1 thereafter, the owner of any Group 2 covered building  
36 must benchmark the building for the previous calendar year.  
37 ~~[[However, the owner of any Group 2 covered building with 10% or~~  
38 more residential occupancy must benchmark the building for the  
39 previous calendar year no later than June 1, 2016, and no later than  
40 June 1st each year thereafter.]] The owner must report the

41 benchmarking information to the Department no later than [[July]]  
42 January 1 each year.

*Beginning on page 7, amend lines 149-156 to read:*

- 43 (a) Annual report required. By October 1 of each year, the Director must  
44 submit a benchmarking report to the County Executive and County  
45 Council. The report must review and evaluate energy efficiency in  
46 covered buildings, including:
- 47 (1) summary statistics on the most recent reported energy  
48 benchmarking information; [[and]]
  - 49 (2) discussion of any energy efficiency trends, cost savings, and job  
50 creation resulting from energy efficiency improvements; and
  - 51 (3) for County buildings:
    - 52 (A) the scores of County buildings benchmarked; and
    - 53 (B) whether the Director recommends any energy efficiency  
54 improvements for specific buildings.

*Beginning on page 8, line 179, delete Article 7.*

*Beginning on page 18, after line 421, add the following uncodified section as follows:*

55 **Sec. 2. Benchmarking Work Group.**

- 56 (a) The Executive must convene a Benchmarking Work Group. Members  
57 of the Work Group must include representatives from the County,  
58 building owners and manager, industry trade associations, non-profit  
59 organizations, and utility companies.

- 60           **(b) The Work Group must:**
- 61           **(1) review the application of Chapter 18A, Article 6, as added by**
- 62           **Section 1 of this Act, to County buildings for the reporting**
- 63           **period ending June 1, 2015; and**
- 64           **(2) submit a report to the County Council and County Executive by**
- 65           **September 1, 2015 with recommendations on implementing**
- 66           **building benchmarking for privately-owned buildings,**
- 67           **including any proposed amendments to County law.**

f:\law\ills\1402 benchmarking\rb amendment condensed.docx

Bill No. 2-14  
 Concerning: Environmental Sustainability  
- Buildings - Benchmarking  
 Revised: 1/16/2014 Draft No. 4  
 Introduced: January 28, 2014  
 Expires: July 28, 2015  
 Enacted: \_\_\_\_\_  
 Executive: \_\_\_\_\_  
 Effective: \_\_\_\_\_  
 Sunset Date: \_\_\_\_\_  
 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 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) 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

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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 Article 5, consisting of**  
 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 as follows:**

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

5        **18A-34 – 18A-37. Reserved.**

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

7        **18A-38. Definitions.**

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

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

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

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

18        Covered building means any building owned by the County, Group 1  
 19        covered building, or Group 2 covered building. Covered building does not  
 20        include any building with more than 10% occupancy which is used for

21        (1) public assembly in a building without walls;

22        (2) warehousing;

23        (3) self storage; or

24        (4) a use classified as manufacturing and industrial or transportation,  
 25        communication, and utilities.

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

29 Department means the Department of Permitting Services.

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

31 Energy performance score or ENERGY STAR score means the numerical  
32 score produced by the benchmarking tool, or any successor score, that  
33 assesses a building's energy performance compared to similar buildings,  
34 based on source energy use, operating characteristics, and geographic  
35 location.

36 Energy use intensity or EUI means a numeric value calculated by the  
37 benchmarking tool that represents the energy consumed by a building  
38 relative to its size.

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

43 Group 2 covered building means any nonresidential building, or any group  
44 of nonresidential buildings that have the same property identification  
45 number, not owned by the County that equals or exceeds 50,000 square feet  
46 gross floor area but is less than 250,000 square feet gross floor area, as  
47 identified by the Director.

48 Gross floor area means the sum of the gross horizontal area of the several  
49 floors of a building or structure measured from the exterior faces of the  
50 exterior walls or from the center line of party walls. In a covered but  
51 unenclosed area, such as a set of gasoline pumps or a drive-through area,  
52 gross floor area means the covered area. Gross floor area does not include  
53 any:

54 (a) basement or attic area with a headroom less than 7 feet 6 inches;

55 (b) area devoted to unenclosed mechanical, heating, air conditioning, or  
 56 ventilating equipment;

57 (c) parking structure; or

58 (d) accessory structure to a residential building.

59 Licensed professional means a professional engineer or a registered architect  
 60 licensed in the State, or another trained individual as defined in applicable  
 61 County regulations.

62 Reported benchmarking information means the descriptive information  
 63 about a building, its operating characteristics, and information generated by  
 64 the benchmarking tool regarding the building's energy consumption and  
 65 efficiency. Reported benchmarking information includes the building  
 66 identification number, address, gross floor area, energy performance score,  
 67 energy use intensity, and annual greenhouse gas emissions.

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

70 **18A-39. Energy use benchmarking.**

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

74 (b) Group 1 covered buildings. No later than December 1, 2016, and  
 75 every December 1 thereafter, the owner of any Group 1 covered  
 76 building must benchmark the building for the previous calendar year.  
 77 The owner must report the benchmarking information to the  
 78 Department no later than January 1 each year.

79 (c) Group 2 covered buildings. No later than December 1, 2017, and  
 80 every December 1 thereafter, the owner of any Group 2 covered  
 81 building must benchmark the building for the previous calendar year.

82           The owner must report the benchmarking information to the  
 83           Department no later than [[July]] January 1 each year.

84           (c) Retention of information. The owner of any covered building must  
 85           retain all information tracked and input into the benchmarking tool for  
 86           at least three 3years after the date benchmarking was required.

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

90           (1) is in financial distress, defined as a building that:

91                   (A) is the subject of a tax lien sale or public auction due to  
 92                   property tax arrearages;

93                   (B) is controlled by a court appointed receiver; or

94                   (C) was recently acquired by a deed in lieu of foreclosure;

95           (2) had average physical occupancy of less than 50% throughout  
 96           the calendar year for which benchmarking is required; or

97           (3) is new construction and received its certificate of use and  
 98           occupancy during the calendar year for which benchmarking is  
 99           required.

100    **18A-40. Data Verification.**

101           (a) Verification required. Before the first benchmarking deadline  
 102           required by Section 18A-39, and before each third benchmarking  
 103           deadline thereafter, the owner of each covered building must assure  
 104           that reported benchmarking information for that year is verified by a  
 105           licensed professional. The verification must be a stamped and signed  
 106           statement by a licensed professional attesting to the accuracy of the  
 107           information. If the Director requests, the owner of a covered building

108 must produce the statement available for the most recent year in  
109 which verification was required.

- 110 (b) Waiver. The Director may waive the requirements of this Section if  
111 the owner shows that compliance with this Section will cause undue  
112 financial hardship. If a no-cost or low-cost verification option is  
113 available, the Director may require the owner to use the alternative  
114 option.

115 **18A-41. Solicitation of compliance information from tenants.**

- 116 (a) Solicitation of information from tenant. An owner of a covered  
117 building must request relevant information from any tenant in a  
118 covered building no later than March 1 of each year in which  
119 benchmarking is required by Section 18A-39. If the owner receives  
120 notice that a tenant intends to vacate a unit which is subject to this  
121 Section, the owner must request the information within 10 days after  
122 receiving the notice to vacate.

- 123 (b) Tenant response. Within 30 days after receiving a request for  
124 information from the building owner, each tenant of a unit in a  
125 covered building must provide the building owner with all  
126 information that the owner cannot otherwise acquire that is necessary  
127 to comply with this Article.

- 128 (c) Failure of tenant to provide information.

- 129 (1) If any tenant does not provide the information required under  
130 this Section to the owner of a covered building, that fact does  
131 not relieve the owner of the obligation to benchmark the  
132 building under Section 18A-39, using all information otherwise  
133 available to the owner.

134 (2) If a tenant of a unit in a covered building does not provide  
 135 information to the owner of the building under this Section, the  
 136 Director must consider the owner to be in compliance with  
 137 Section 18A-39 if:

138 (A) the owner shows that the owner requested the tenant to  
 139 provide the information under this Section; and

140 (B) the owner benchmarked the building under Section 18A-  
 141 39, using all information otherwise available to the  
 142 owner.

143 **18A-42. Annual report; disclosure of benchmarking information.**

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

148 (1) summary statistics on the most recent reported energy  
 149 benchmarking information;

150 (2) discussion of any energy efficiency trends, cost savings, and job  
 151 creation resulting from energy efficiency improvements; and

152 (3) for County buildings:

153 (A) the scores of County buildings benchmarked; and

154 (B) whether the Director recommends any energy efficiency  
 155 improvements for specific buildings.

156 (b) Disclosure of benchmarking information. The Director must make  
 157 reported benchmarking information readily available to the public,  
 158 and the Director may exempt information from disclosure only to the  
 159 extent that disclosure is prohibited under federal or state law.

- 160 (c) Exceptions to disclosure. To the extent allowable under state law, the  
 161 Director must not make the following readily available to the public:  
 162 (1) any individually-attributable reported benchmarking  
 163 information from the first calendar year that a covered building  
 164 is required to benchmark; and  
 165 (2) any individually-attributable reported benchmarking  
 166 information relating to a covered building that contains a data  
 167 center, television studio, or trading floor that together exceeds  
 168 10% of the gross square footage of the individual building until  
 169 the Director finds that the benchmarking tool can make  
 170 adequate adjustments for these facilities. When the Director  
 171 finds that the benchmarking tool can make adequate  
 172 adjustments, the Director must report this data in the annual  
 173 report.

174 **18A-43. Regulations; penalties.**

- 175 (a) The County Executive may issue Method (2) regulations to administer  
 176 this Article.  
 177 (b) Any violation of this Article is a Class A violation.

178 **Sec. 2. Benchmarking Work Group.**

- 179 (a) The Executive must convene a Benchmarking Work Group. Members  
 180 of the Work Group must include representatives from the County,  
 181 building owners and manager, industry trade associations, non-profit  
 182 organizations, and utility companies.

