

MEMORANDUM

October 2, 2015

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Public Hearing:** Bill 35-15, Environmental Sustainability – Benchmarking - Amendments

Bill 35-15, Environmental Sustainability – Benchmarking - Amendments, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on September 15. A Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for November 2 at 9:30 a.m.

Bill 35-15 would add an intent section to the Building Energy Use Benchmarking law, amend certain definitions, provide for alternative paths to verification, and alter the private sector building group deadlines. Bill 35-15 is the result of a report issued by the Benchmarking Work Group – a group made of a broad set of stakeholders charged with reviewing the Building Energy Use Benchmarking law and make recommendations regarding the law’s implementation.

This packet contains:	<u>Circle #</u>
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Bill No. 35-15
Concerning: Environmental Sustainability
- Benchmarking - Amendments
Revised: 8/3/2015 Draft No. 1
Introduced: September 15, 2015
Enacted: March 15, 2017
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

AN ACT to:

- (1) add an intent section of the law;
- (2) amend certain definitions;
- (3) provide for certain alternative paths to verification;
- (4) alter the private sector building group deadlines; and
- (5) generally amend County law regarding energy efficiency and environmental sustainability.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Sections 18A-38, 18A-39, 18A-40, and 18A-42

By adding

Chapter 18A, Environmental Sustainability
Section 18A-38A

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

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

27 number, that equals or exceeds 50,000 in total building square footage [square
28 feet gross floor area, as identified by the Director].

29 * * *

30 *Group 1 covered building* means any nonresidential building, or any group of
31 nonresidential buildings that have the same property identification number,
32 not owned by the County that equals or exceeds 250,000 in total building
33 square footage [square feet gross floor area, as identified by the Director].

34 *Group 2 covered building* means any nonresidential building, or any group of
35 nonresidential buildings that have the same property identification number,
36 not owned by the County that equals or exceeds 50,000 square feet gross floor
37 area but is less than 250,000 in total building square footage [square feet gross
38 floor area, as identified by the Director].

39 * * *

40 [*Licensed professional*] Recognized data verifier means a [professional
41 engineer] Professional Engineer or a [registered architect] Registered
42 Architect [licensed in the State], or another trained individual whose
43 professional license or building energy training program credential is
44 recognized by the Director [as defined in applicable County regulations].

45 * * *

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

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

- 53 (2) area devoted to unenclosed mechanical, heating, air conditioning, or
- 54 ventilating equipment;
- 55 (3) parking structure; or
- 56 (4) accessory structure to a residential building.

57 **18A-39. Energy use benchmarking.**

58 (a) *County buildings.* No later than June 1, 2015, and every June 1
59 thereafter, the County must benchmark [all buildings owned by the]
60 County buildings for the previous calendar year and report the
61 benchmarking information to the Department.

62 (b) *Group 1 covered buildings.* No later than [December] June 1, 2016,
63 and every [December] June 1 thereafter, the owner of any Group 1
64 covered building must benchmark the building for the previous
65 calendar year[. The owner must] and report the benchmarking
66 information to the Department [no later than January 1 each year].

67 (c) *Group 2 covered buildings.* No later than [December] June 1, 2017,
68 and every [December] June 1 thereafter, the owner of any Group 1
69 covered building must benchmark the building for the previous
70 calendar year[. The owner must] and report the benchmarking
71 information to the Department [no later than January 1 each year].

72 * * *

73 **18A-40. Data Verification.**

74 (a) *Verification required.* Before the first benchmarking deadline required
75 by Section 18A-39, and before each third benchmarking deadline
76 thereafter, the owner of each covered building must assure that reported
77 benchmarking information for that year is verified by a [licensed
78 professional] recognized data verifier. The verification must be a
79 [stamped and] signed statement by a [licensed professional] recognized

80 data verifier attesting to the accuracy of the information. If the Director
81 requests, the owner of a covered building must produce the statement
82 available for the most recent year in which verification was required.

83 (b) *[Waiver] Alternative Verification Path.* The Director may waive the
84 verification requirement [of] under this Section if the owner [shows that
85 compliance with this Section will cause undue financial hardship. If a
86 no-cost or low-cost verification option is available, the Director may
87 require the owner to use the alternative option] can demonstrate that the
88 building has achieved ENERGY STAR Certification for at least 6
89 months of the year being benchmarked.

90 **18A-42. Annual report; disclosure of benchmarking information.**

91 * * *

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

- 94 (1) any individually-attributable reported benchmarking information
95 from the first calendar year that a covered building is required to
96 benchmark; and
- 97 (2) any individually-attributable reported benchmarking information
98 relating to a covered building that contains a data center, or
99 television studio [, or trading floor] that together exceeds 10% of
100 the [gross square footage] total building square footage of the
101 individual building until the Director finds that the
102 benchmarking tool can make adequate adjustments for these
103 facilities. When the Director finds that the benchmarking tool
104 can make adequate adjustments, the Director must report this
105 data in the annual report.

LEGISLATIVE REQUEST REPORT

Bill xx-15

Energy Benchmarking Amendments

- DESCRIPTION:** The Commercial Energy Benchmarking Law, adopted May 2014, required the County Executive to convene a Benchmarking Work Group to provide recommendations regarding the implementation of the bill within the private sector, including any recommended legislative amendments. The Benchmarking Work Group is required to submit a report to the County Executive and County Council by September 2015. This bill would amend the adopted Commercial Energy Benchmarking Law, which requires certain building owners to benchmark their energy use and report it to the County for public disclosure. These amendments are proposed by the Benchmarking Work Group with the intent to improve implementation of the law and its purpose.
- PROBLEM:** The Benchmarking Work Group's examination of the law and its implementation with County facilities and within other jurisdictions raised concerns around specific issues, from the deadlines to verification requirements, inconsistent application between public and private facilities, and unclear definitions. These issues would directly impact implementation of the law, and the recommendations provided seek to mitigate these issues.
- GOALS AND OBJECTIVES:** This bill is designed to address a variety of issues identified by the Benchmarking Work Group by adding an intent section of the law; amending certain definitions; providing for certain alternative paths to verification; altering the private sector building group deadlines; and generally amending County law regarding energy efficiency and environmental sustainability.
- COORDINATION:** Department of Environmental Protection
- FISCAL IMPACT:**
- ECONOMIC IMPACT:**
- EVALUATION:**
- EXPERIENCE ELSEWHERE:**
- SOURCE OF INFORMATION:** Michelle Vigen, Senior Energy Planner, Division of Environmental Policy and Compliance, Department of Environmental Protection (7-7749)
- APPLICATION WITHIN MUNICIPALITIES:** This bill applies to all municipalities that accept or adopt the County Environmental Sustainability Law, Chapter 18A.
- PENALTIES:**

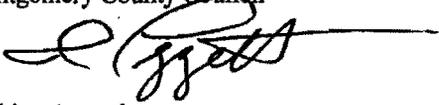


OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

August 3, 2015

TO: George Leventhal, President, Montgomery County Council
FROM: Isiah Leggett, County Executive 
SUBJECT: Introduction of XX-15 Benchmarking Amendments

It is my pleasure to transmit the attached Benchmarking Amendments Bill and accompanying Benchmarking Work Group Report.

The Commercial Energy Benchmarking Law, adopted May 2014, required the County Executive to convene a Benchmarking Work Group, made up of a broad set of stakeholders, to (1) review the County's benchmarking process leading up to their June 1, 2015 deadline, and (2) provide recommendations regarding the implementation of the bill within the private sector, including any recommended legislative amendments. The Benchmarking Work Group is required to submit a report to the County Executive and County Council by September 2015.

The Department of Environmental Protection (DEP) convened a Work Group from a broad set of stakeholders, including an initial list of over 70 stakeholders representing utilities, building owners, nonprofits and associations, and energy service companies. The Work Group met as a whole and in committees approximately twenty times between September 2014 and June 2015. This transmittal includes both their Report and a new bill reflecting their recommendations:

- A final Report outlines the work of the Benchmarking Work Group and proposes several recommended legislative amendments to improve the implementation of the Law. Each set of amendments is introduced with a summary, justification, and textual annotations.
- Based on this Report, DEP has drafted a new bill (XX-15 Benchmarking Amendments) to reflect the amendments proposed within this report. This bill would amend the adopted Commercial Energy Benchmarking Law, which requires certain building owners to benchmark their energy use and report it to the County for public disclosure. Specifically, this bill would add an intent section of the law; amend certain definitions; provide for certain alternative paths to verification; and alter the private sector building group deadlines.

If you have any questions, please contact Lisa Feldt in the Department of Environmental Protection at 240-777-7730 or lisa.feldt@montgomerycountymd.gov.

IL:kdM

Attachment (s)

Fiscal Impact Statement
County Executive Bill XX-15 – Environmental Sustainability - Benchmarking -
Amendments

1. Legislative Summary.

This bill would amend Bill 2-14 – Environmental Sustainability – Buildings – Benchmarking to:

- 1) add an intent section to the law;
- 2) amend certain definitions;
- 3) provide for certain alternative paths to verification;
- 4) alter the private sector building group deadlines; and
- 5) generally amend County law regarding energy efficiency and environmental sustainability.

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

The amendments proposed in Bill XX-15 would have no impact on County revenues and expenditures.

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

Bill XX-15 would create no revenue or expenditures over the next 6 fiscal years.

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

Not Applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Bill XX-15 would have no impact on the County's IT systems.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill XX-15 does not authorize future spending and will have no impact on future revenues or expenditures.

7. An estimate of the staff time needed to implement the bill.

Staff time will not be needed to implement the changes in Bill XX-15.

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

There are no new staff responsibilities as a result of Bill XX-15 and the bill would not affect other duties in the Department of Environmental Protection.

9. An estimate of costs when an additional appropriation is needed.

No additional appropriation is needed as a result of Bill XX-15.

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

Not Applicable.

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

Not Applicable.

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

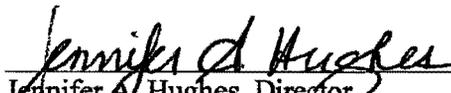
Bill XX-15 amends definitions and administrative procedures related to the previously adopted Bill 2-14. These amendments to Bill 2-14 do not have a budgetary impact on county operations.

13. Other fiscal impacts or comments.

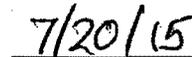
Not Applicable.

14. The following contributed to and concurred with this analysis:

Matt Schaeffer, Office of Management and Budget
Michelle Vigen, Department of Environmental Protection



Jennifer Hughes, Director
Office of Management and Budget



Date

Economic Impact Statement
Bill #-15, Environmental Sustainability – Benchmarking – Amendments

Background:

This legislation would amend sections of Chapter 18A of the County Code as follows:

- Add an intent section of the law,
- Amend certain definitions,
- Provide for certain alternative paths to verification, and
- Alter the private-sector building group deadlines.

Bill #-15 essentially provides technical amendments to Chapter 18A. The amendments change the terminology of “gross floor area” to “total building square footage” and expand eligibility to complete the verification requirements to a group of “recognized data verifiers.” The terminology change from “gross floor area” to “total building square footage” is to differentiate it from the term used in the software used by building owners to comply with the law and does not affect the definition or scope of the law.

The change to the current law pertaining to certain alternative paths to verification is to permit those building owners with buildings that have voluntarily achieved ENERGY STAR certification for at least six months of the year being benchmarked to not have to undertake a separate and redundant verification. This change will enable certain building owners who have achieved ENERGY STAR certification on any buildings to avoid additional costs for verification of those buildings.

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

Sources of information include the Department of Environmental Protection (DEP). The economic impact statement is based on information provided by DEP, and Finance has not made any assumptions or provided methodologies in preparing the economic impact statement.

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

There are no variables that could affect the economic impact estimates. The change in the verification procedure would result in cost savings to any building owners who have achieved ENERGY STAR verification on any buildings.

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

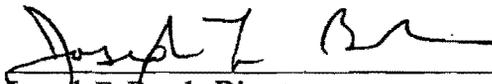
Bill #-15 provides an alternative path to verification and, as such, would provide a cost savings to any building owners who have achieved ENERGY STAR certification on any buildings. Without specific company data, it is uncertain as to the specific amount of cost savings attributed to the proposed change in certain alternative paths to verification.

Economic Impact Statement
Bill #-15, Environmental Sustainability – Benchmarking – Amendments

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

Please see paragraph #3.

5. The following contributed to or concurred with this analysis: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance; Michelle Vigen, Department of Environmental Protection.



Joseph F. Beach, Director
Department of Finance

7/21/15
Date

Report by the Benchmarking Work Group

Providing Recommendations for Legislative Amendments to Adopted Bill 2-14 (Energy Benchmarking)

June 10, 2015

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EXECUTIVE SUMMARY

In May 2014, Montgomery County became the first county in the nation to adopt a benchmarking and transparency law. Section 2 of the adopted bill provided for the convening of a Benchmarking Work Group, made up of a broad set of stakeholders, to review the County's benchmarking process leading up to their June 1, 2015 deadline, and provide recommendations regarding the implementation of the bill within the private sector, including any recommended legislative amendments.

Starting in the fall of 2014, the Department of Environmental Protection (DEP) solicited participation from a broad swath of stakeholders, including an initial list of over 70 stakeholders representing, utility, building owners, nonprofits and associations, and energy service companies.

This report outlines the work of the Legislative Committee of the Benchmarking Work Group, specifically several recommended legislative amendments to improve the implementation of the Law.

Recommended Legislative Amendments:

1. Add Intent of the Law
2. Rename "Gross square footage" within the law
3. Remove "As identified by the Director" language
4. Verification: Expand credentials, revise exemption, and other guidance
 - a. Expanding the "licensed professional" to a "Recognized data verifier" including criteria for accepting credentials
 - b. Modification of Verification Hardship
5. Making requirements of County Buildings consistent with private Covered Buildings
6. Moving private Covered Buildings deadlines to align with reporting requirements

Each set of amendments provided with a summary, justification, and textual annotations. A version of the legislation, with all the amendments marked, is included at the end of this document.

BACKGROUND

In May 2014, Montgomery County became the first county in the nation to adopt a benchmarking and transparency law. This law requires certain building owners to report their building energy use to the County for disclosure on an annual basis.

Section 2 of the adopted bill provided for the convening of a Benchmarking Work Group, made up of a broad set of stakeholders, to review the County's benchmarking process leading up to their June 1, 2015 deadline, and provide recommendations regarding the implementation of the bill within the private sector, including any recommended legislative amendments.

Work Group Convening

The Department of Environmental Protection (DEP) solicited participation from a broad swath of stakeholders, including an initial list of over 70 stakeholders representing, utility, building owners, nonprofits and associations, and energy service companies.

This initial group was invited to an introductory meeting September 2014, where several speakers provided context for the law, including DEP, DGS, JBG Companies, AOBA, and Pepco. The Work Group opted to break into three committees to address three distinct areas of the law's implementation:

1. Outreach
2. Technical Assistance
3. Legislative

The Outreach and Technical Assistance committees have provided valuable guidance and advice on DEP's benchmarking programming thus far, including:

- Connections and contact information for important outreach partners, such as industry organizations, media groups, and nonprofits
- Early Bird program design, goals, and recognition
- Benchmarking Ambassadors programming
- Communication strategies for complex aspects of the law
- Review of the Benchmarking Website layout, organization, and content
- Outreach and Technical Assistance objectives, in general

These two groups have since combined into a single group that continues to provide guidance on Benchmarking programming.

The Legislative committee took a deep dive into the legislation, starting with an initial review by DEP of areas in the County's law that, compared to other jurisdictions' legislation, might benefit from discussion or clarification by the Legislative committee.

The committee worked through a list of these areas, and through discussion, solicitation of ideas from building owners aided via AOBA, and research via DEP, provided guidance to DEP to clarify points of the legislation in guidance (on the Benchmarking Website).

The committee's work also resulted in several recommended legislative amendments, which this report outlines and details.

Recommended Legislative Amendments

1. Addition of Intent
2. Renaming "Gross square footage" to "Total square footage"
3. Removing "As identified by the Director" in identifying covered buildings
4. Verification Amendments

- a. Expanding the "licensed professional" to a "Recognized data verifier" including criteria for accepting credentials
- b. Modification of Verification Hardship
5. Making requirements of County Buildings consistent with private Covered Buildings
6. Moving private Covered Buildings deadlines to align with reporting requirements

Review Process

The Legislative Committee developed these recommendations through a series of eight meetings over the course of six months. Meeting times and information, agendas, and notes were distributed through the Benchmarking Working Group email list, which is administered by DEP.

This spring, the Legislative Committee solicited comments from the Work Group as a whole, leading up to and at a Full Work Group meeting on June 10, 2015. Comments from this process have been incorporated into this final draft.

RECOMMENDED LEGISLATIVE AMENDMENTS

Each set of amendments is detailed below, with a summary, justification, and textual annotations. A version of the legislation, with all the amendments marked, is included at the end of this document.

RECOMMENDATION 1: Add Intent of the Law

Overview

Conversations within the Benchmarking Work Group Legislative Committee have often revolved around the importance of building owners acting on the information provided through the benchmarking process and reaping the multiple benefits of energy conservation and energy efficiency. The Working Group has noted that this intent is presented in the Law, and that it is important to clarify the purpose and value of the legislation for those that must comply with it.

Justification

- **Recognize the foundational actions that led to this law** – The 2009 Climate Action Protection Plan and 2013 Commercial Building Energy Efficiency study both pointed to working with the commercial sector to reduce energy use and emissions. The latter study specifically identified benchmarking legislation as a sound strategy to help the County meet its emission reduction goals.
- **Educate stakeholders and the broader community** about the impact that building energy use has on the County's greenhouse gas emissions (1/3 commercial buildings, 1/3 residential) and reduction goal of 80% by 2050.
- **State clearly the energy conservation goals** – These goals were inherent in the initial drafts of the legislation within the energy audit and retrocommissioning requirements. Since those were removed, the energy-saving intent of the law is no longer clear.
- **Identify benefits beyond energy consumption and cost savings** – The law can and will provide benefits beyond the energy savings results seen from other jurisdictions with benchmarking laws.

Issue	Recommended Amendment
Intent of the law	<p>Add to the following language in the appropriate section or in an additional section:</p> <p><u>The intent of this legislation is to:</u></p> <ul style="list-style-type: none"> • <u>Implement recommendations of the 2009 Climate Protection Plan (EEC-2), 2013 Commercial Building Energy Efficiency study (Chapter 3.2), support efforts of the Office of Sustainability (Bill 6-14) to increase energy efficiency and reduce greenhouse gas emissions in the private sector and County buildings.</u> • <u>Engage the commercial building sector with building energy information crucial to adopting energy conservation and efficiency opportunities.</u> • <u>Spur market transformation by making building performance transparent for the building and</u>

	<p>tenant market) allowing more accurate evaluation of energy costs and creating a competitive market for energy efficient buildings.</p> <ul style="list-style-type: none">• Strengthen our local economy by encouraging more efficient business operations and providing new opportunities for local businesses that provide energy conservation and efficiency services.• Recognize those building owners who have made investments to improve their building energy performance and expand in-house capacity for energy management.
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RECOMMENDATION 2: Rename term, "gross floor area" within the law

Overview

The legislation determines applicability to buildings based on gross floor area. The law covers buildings that have a gross floor area of 50,000 square feet or greater. The tool to complete the benchmarking, ENERGY STAR Portfolio Manager, also uses this term, but differently. A summary of differences is in the GUIDANCE: Gross Floor Area Definitions.

Justification

- This recommendation is to remove any confusion that may be caused by having the same term used in the Law and in Portfolio Manager, but with different definitions.
- The group has reviewed that the definitions for their respective purposes are appropriate, and a re-naming of the term within the Law may be beneficial.

Issue	Recommended Amendment
<p>"Gross square footage" terminology</p>	<p>Rename "gross square footage" to "total building square footage"</p> <p>Remove "trade floors" from the list of exempted buildings – there are no trade floors in the County</p> <p>Sec. 18A-38. Definitions. <i>County building</i> means any building owned by the County, or any group of buildings owned by the County that have the same property identification number, that equals or exceeds 50,000 square feet gross floor area in total building square footage, <u>as identified by the Director.</u></p> <p><i>Group 1 covered building</i> means any nonresidential building, or any group of nonresidential buildings that have the same property identification number, not owned by the County that equals or exceeds 250,000 square feet gross floor area in total building square footage, <u>as identified by the Director.</u></p> <p><i>Group 2 covered building</i> means any nonresidential building, or any group of nonresidential buildings that have the same property identification number, not owned by the County that equals or exceeds 50,000 square feet gross floor area in total building square footage but is less than 250,000 square feet gross floor area in total building square footage, <u>as identified by the Director.</u></p> <p>Gross floor area <u>Total building square footage</u> means the sum of the gross horizontal area of the several floors of a building or structure measured from the exterior faces of the exterior walls or from the center line of party walls. In a covered but unenclosed area, such as a set of gasoline pumps or a drive-through area, gross floor area means the covered area. Gross floor area <u>Total building square footage</u> does not include any:</p> <ol style="list-style-type: none"> (1) basement or attic area with a headroom less than 7 feet 6 inches; (2) area devoted to unenclosed mechanical, heating, air conditioning, or ventilating equipment;

- (3) parking structure; or
- (4) accessory structure to a residential building

Sec. 18A-42. Annual report, disclosure of benchmarking information.

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

- (2) any individually-attributable reported benchmarking information relating to a covered building that contains a data center, or television studio, or trading floor that together exceeds 10% of the gross floor area total building square footage of the individual building until the Director finds that the benchmarking tool can make adequate adjustments for these facilities. When the Director finds that the benchmarking tool can make adequate adjustments, the Director must report this data in the annual report.

RECOMMENDATION 3: Remove “as determined by the Director” language

Overview

In the definition of Group 1 and 2 and County Covered Buildings, the definition lays out which buildings are covered and ends with ...”as identified by the Director.” This language places the onus upon DEP staff to identify each individual building that needs to be benchmarked, versus the law applying evenly to all buildings that meet the definition.

Justification

- **Regulation standard practice places the onus on the resident/business owner to comply if applicable, versus the local government identifying those Individually responsible** - This language and resulting responsibility placed upon staff is not standard practice for regulation in general, and especially amongst other benchmarking jurisdictions. Other jurisdictions make an effort to identify and notify buildings that are covered by the law, but buildings owners that know their buildings qualify are still required to benchmark, even if not identified. Such an approach matches other regulations which apply to businesses whether or not they are identified by the administering agency.
- **Imperfect data will result in an unreliable list of covered buildings and responsible building owners** - The proposed approach is particularly important in the current situation where there is not good data available to county staff to identify covered buildings. Staff has parcel-based data and rentable square footage per building data, but not building square footage. Staff is not able to confidently identify all the buildings that will need to comply.
- **DEP will still attempt to identify and notify covered buildings** - This change would simply mean that a building owner with a building covered by the law must benchmark, even if DEP is not able to identify from their data sources, that they are covered.

Issue	Recommended Amendments
<p>Removing “As identified by the Director” in determining Covered Buildings</p>	<p>Sec. 18A-38. Definitions. County building means any building owned by the County, or any group of buildings owned by the County that have the same property identification number, that equals or exceeds 50,000 square feet gross floor area, as identified by the Director.</p> <p>Group 1 covered building means any nonresidential building, or any group of nonresidential buildings that have the same property identification number, not owned by the County that equals or exceeds 250,000 square feet gross floor area, as identified by the Director.</p> <p>Group 2 covered building means any nonresidential building, or any group of nonresidential buildings that have the same property identification number, not owned by the County that equals or exceeds 50,000 square feet gross floor area but is less than 250,000 square feet gross floor area, as identified by the Director.</p>

RECOMMENDATION 4: Revise and Clarify Verification

Overview

Benchmarking provides valuable data on building energy use, and collecting the data and benchmarking requires time and effort on the part of building owners and managers; some may even opt to contract this work out to an energy service provider. Verification is increasingly becoming part of benchmarking and disclosure laws for many reasons. There can be a cost to verification, which the Work Group sought to address. The group discussed Chicago's approach (the only other jurisdiction currently implementing with a verification requirement), consulted the Institute for Market Transformation, and EPA ENERGY STAR in their work.

The Work Group has provided several different recommendations below to be considered in-whole together to improve the value of benchmarking and lower the potential cost of verification.

Justification

- **Data Quality** - Due to the data quality issues being reported from other jurisdictions with benchmarking laws, a verification process is considered a best practice and an important component of the benchmarking process, both for the public institutions administering the programs, but also for the building owners and industry as a whole.
- **Reliability and Value of Data Transparency** - A verification process contributes to an even playing field in which businesses can feel confident in the data set as a whole, and that their competitors are held to a similar standard for accuracy.
- **Policy Decision-making** - In order for the County to consider benefits or incentives to aid building improvements, an accurate representation of the building stock and performance levels are necessary to identify cost-effective use of resources and target support.
- **Knowledge and capacity building** - The discussion that will likely occur in the process of verification between a knowledgeable verifier and the building owner or manager could provide valuable information towards taking actions to reduce energy use within the building.
- **Promote workforce development and local jobs** - The verification piece was also defended as a workforce development and local job opportunity. In-house verification is allowed and would encourage building owners to have their existing staff trained in energy management and Portfolio Manager. Verification will also drive local training programs and new leads for energy conservation projects.

Key Changes

- **Expanded the legislated definition of Licensed Professional** - The cost associated with this part of the law is tied to the requirement of a "licensed professional" which often means Professional Engineer or Registered Architect. The group looked at the intent of verification and Chicago's model, and expanded the scope to include less costly credentials, redefining the "licensed professional" term to be "recognized data verifier".
- **Provided guidance on type of credential accepted to do verification** - Criteria were also established (within their Guidance) on how DEP would evaluate additional credentials that want to qualify.
- **Provided guidance on the scope of verification** - Based on conversations with EPA ENERGY STAR and Chicago, the group decided that verification should follow the applicable sections of the Portfolio Manager Verification Checklist. Guidance documents should further inform that verification can be done without an on-site visit.
- **Provided guidance on how verification should be documented** - Again, the group followed EPA ENERGY STAR and Chicago's best practices to determine how

verification should be documented and reported; this will be clarified in Guidance documents.

- **Removed hardship exemption for this section of the legislation** – The group determined that the hardship exemption for the law as a whole was sufficient, and that the lower cost of verification proposed should not warrant a second level of exemption from this part of the law.

Issue	Recommended Amendments and Guidance
<p>Scope of who can complete the required verification</p>	<p>Strike "Licensed professional" and replace with "Recognized data verifier"</p> <p>Definitions Licensed professional Recognized data verifier means a Professional Engineer or a Registered Architect or a trained individual whose professional license or building energy training program credential is recognized by the Director. Professional license refers to a professional engineer or a registered architect licensed in the State, or another trained individual as defined in applicable County regulations.</p> <p>Data Verification Verification required. Before the first benchmarking deadline required by Section 18A-39, and before each third benchmarking deadline thereafter, the owner of each covered building must assure that reported benchmarking information for that year is verified by a licensed professional recognized data verifier. The verification must be a stamped and signed statement by a licensed professional recognized data verifier attesting to the accuracy of the information.</p>
<p>Guidance on Recognized data verifier</p>	<p>In Guidance, DEP should include the following information:</p> <p><u>In-house or Third-party Verification</u> Recognized Data Verifiers may include in-house individuals or third-party providers.</p> <p><u>Criteria to Determine Recognized Data Verifier Credential</u> The Director will evaluate professional licenses and building energy training program credentials to be accepted as a Recognized Data Verifier based on the following criteria:</p> <ul style="list-style-type: none"> • Demonstrates trained individuals' proficiency in building energy benchmarking and familiarity with ENERGY STAR Portfolio Manager; • Demonstrates trained individuals' working knowledge of energy-efficient operations, measures, and technology; • Provides opportunities for ongoing skill maintenance and/or re-training as technologies, tools, and practices evolve; • Provides means of tracking graduates or credentialed individuals by name and with a unique identifier (such as a license, identification, or other number); and

	<ul style="list-style-type: none"> • Makes training materials and records available for review by the Director and is found to be in compliance with preceding criteria. <p><u>Recommended Credentials for the Director to Accept</u> The Legislative Work Group has helped develop an initial roster of credentials they recommend the Director recognize. A full list is under Appendix A.</p> <p>DEP staff will also explore ways to recognize individuals qualified but without an accepted credential.</p>
Guidance on Verification Scope	Provide minimal guidance on the scope of verification, and refer to the relevant aspects of the Portfolio Manager Data Verification Checklist. Provide guidance that it may be possible to complete verification without an on-site visit.
Verification Documentation	Require the use of the free Portfolio Manager Verification Checklist, and include the full name, credentials, and contact information (email or phone) of verifier in Portfolio Manager notes (which are submitted to the County). Verification documentation, signed not necessarily stamped should be kept as a hard copy, to be made available upon request by the Director, per legislation.
Verification Waiver	<p>Remove the hardship waiver. Add ENERGY STAR Certification as an alternative path to comply with verification. DEP will provide guidance on how this documentation should be transmitted to DEP.</p> <p>Waiver Alternative Verification Path: The Director may waive the verification requirements under this Section if the owner show can demonstrate that the building has achieved ENERGY STAR Certification for at least 6 months of the year being benchmarked; that compliance with this Section will cause undue financial hardship. If a no cost or low cost verification option is available, the Director may require the owner to use the alternative option.</p>
DEP provide Pro Bono verification program	Like Chicago's pro bono verification program, DEP is encouraged, particularly for the compliance period of Group 2 buildings in 2017, to develop and implement a pro bono verification program. Such a program would solicit energy service providers willing to volunteer time to complete verification for building owners who cannot afford verification (e.g. nonprofits, churches, other buildings with particular hardships). Buildings that request pro bono verification would be published on a list (as a small deterrent to avoid abuse of the program).

RECOMMENDATION 5: County Covered Buildings and Deadlines

Overview

Under the benchmarking legislation section for County buildings, the language does not use the defined term "County Buildings" but instead refers to "all buildings owned by the County" and does not provide a date for them to report to DEP, only to benchmark. This change would make the law consistently applied across County buildings and private sector buildings.

Justification

- **Eliminate confusion about which buildings are to be benchmarked in the County under the law** – Using the defined term, "County buildings" will clarify and make consistent the intent that is within the definition to benchmark County buildings 50,000 square feet and greater.
- **Provide for reporting of data to DEP to be included in their reporting and database** – The currently language only requires benchmarking, but not reporting. To remain within the spirit of leading by example, County buildings should also report their data by their June 1 deadline each year.

Note: These changes will not take effect unless adopted through legislative amendment. For the County's first benchmarking year (June 1, 2015), DGS and DEP are working together to make sure DEP can meet their own reporting deadlines, and that DGS is meeting its obligations as best understood under the law.

Issue	Recommended Amendment
Amend the County buildings benchmarking language	Amend the County buildings benchmarking language to refer to the defined term, "County buildings", and to add reporting obligation consistent with private buildings covered under the law. 18A-39 Energy use benchmarking. (a) <i>County buildings.</i> No later than June 1, 2015, and every June 1 thereafter, the County must benchmark all buildings owned by the County buildings for the previous calendar year and <u>report the benchmarking information to the Department.</u>

RECOMMENDATION 6: Move Private Building Deadlines to June 1

Overview

The current set of deadlines in the legislation are not clear, do not align with reporting deadlines within the same legislation, and may cause inconvenience to major stakeholders due to the proximity to holidays. The Work Group recommends moving the deadline up to June 1.

Justification

- **Two deadlines are unnecessary and confusing** – The legislation provides a separate deadline for benchmarking and for reporting. The two deadlines are unnecessary, as the former is unenforceable and *when* one benchmarks is irrelevant so long as it has happened before they report to the County. No other jurisdiction has two deadlines for a pure bill such as was adopted.
- **The December 1 deadline does not align with DEP reporting requirements and may render data disclosure irrelevant** – DEP is required to report to Council on the benchmarking law each October. Current deadlines mean that DEP would be reporting data that is nearly two years old. (e.g. DEP would report on and disclose CY 2015 data, reported December 2016/January 2017 in October 2017) Such a timeline would reduce the value and impact of the data disclosure.
- **Benchmarking will not take 11 months to complete** - Jurisdictions with benchmarking laws have deadlines ranging from April 1 (DC) to typically June 1. Bills through the end of the previous calendar year are usually available by March.
- **The current deadlines falls during major holidays** - The December 1 holiday falls right between Thanksgiving and Christmas holidays, which can pose difficulties in terms of staff availability, time out of the office, travel, and end-of-the-year reporting (for building owners, utility data access providers, and local government).
- **The proposed deadline aligns but does not overlap with DC's deadline, which is amenable to building owners with portfolios in both jurisdictions and utility staffing availability.** DC's benchmarking deadline is April 1. Utilities have requested we stagger our deadlines.

Issue	Recommended Amendments
Reporting Deadline	<p>Adjust private building deadlines to June 1 each year to match County building deadlines and align with other benchmarking policies in the region and DEP's reporting deadline.</p> <p>18A-39 Energy use benchmarking.</p> <p>(b) Group 1 covered buildings. No later than December June 1, 2016, and every December June 1 thereafter, the owner of any Group 1 covered building must benchmark the building for the previous calendar year and The owner must report the benchmarking information to the Department no later than January 1 each year.</p> <p>(c) Group 2 covered buildings. No later than December June 1, 2017, and every December June 1 thereafter, the owner of any Group 2 covered building must benchmark the building for the previous calendar year and The owner must report the benchmarking information to the Department no later than January 1 each year.</p>

APPENDIX A: Recommended Verification Credentials

These credentials are not part of a legislative amendment, but per legislative amendment, credentials must be recognized by the Director in order to qualify an individual to perform verification under the law. The following credentials are recommended by the Legislative Committee be recognized by the DEP Director as qualifying credentials.

<u>Credential</u>	<u>Institution/Assoc.</u>
Professional Engineer (PE)	National Society of Professional Engineers
Registered Architect (RA)	American Institute of Architects
Certified Energy Manager (CEM)	Association of Energy Engineers (AEE)
Building Energy Assessment Professional (BEAP)	ASHRAE
Certified Energy Auditor (CEA)	AEE
LEED – Professional with specialty in Operations + Maintenance (LEED-AP O+M)	US Green Building Council (USGBC)
LEED-Fellow – For outstanding APs	USGBC
Building Energy Modeling Professional (BEMP)	ASHRAE
Commissioning Process Management Professional Certification (CPMP)	ASHRAE
Operations and Performance Management Professional (OPMP)	ASHRAE
Certified Commissioning Professional (CCP)	Building Commissioning Association (BCA)
Associate Commissioning Professional (ACP)	BCA
Sustainability Facility Professional (SFP)	International Facilities Management Association
Certified Building Commissioning Professional (CBCP)	AEE
Existing Building Commissioning Professional (EBCP)	AEE
RPA/FMA High Performance Designation (RPA/FMA-HP)	BOMI International
Systems Maintenance Technician (SMT)	BOMI International
Systems Maintenance Administrator (SMA)	BOMI International
Real Property Administrator (RPA) with caveat requirements	BOMI International
Certified Property Manager (CPM) with caveat requirements	Institute of Real Estate Management

RPA and CPM are acceptable verification credentials with the following caveats noted below. Documentation must be submitted to energy@montgomerycountmd.gov by the verifier each year they complete verification under the benchmarking law.

- RPA caveat: RPA must have been achieved with the elective course, Asset Management OR achieved with completion of at least 3 of the 5 Sustainability/High Performance Experience Criteria (http://www.bomi.org/uploadedFiles/2010_New_Site/Site-wide_Images/RPA%20Experience%20Requirement-2015.pdf).
- CPM caveat: CPM must have been achieved with the following three functions selected and illustrated in the Experience Form (<https://www.irem.org/File%20Library/Membership/CPMExperienceForms.pdf>): #3, #30, and #33.