

MEMORANDUM

TO: Government Operations and Fiscal Policy/
Transportation, Infrastructure, Energy and Environment Committee

FROM:  Michael Faden, Senior Legislative Attorney
Leslie Rubin, Legislative Analyst, Office of Legislative Oversight

SUBJECT: **Worksession:** Expedited Bill 22-13, Taxation – Fuel Energy Tax – Renewable Energy Sources

Expedited Bill 22-13, Taxation – Fuel Energy Tax – Renewable Energy Sources, sponsored by the Council President at the request of the County Executive and Councilmember Leventhal, was introduced on July 9, 2013. A public hearing was held on July 30 (see testimony, ©12-14).

Bill 22-13 would exempt from the County fuel-energy tax any energy produced and delivered in the County and generated from a renewable energy source. A renewable energy source is defined by reference to the definition of a “Tier 1 renewable source” in the state Public Utilities law (see ©10-11), which includes solar and wind power, biomass, and geothermal energy, among other sources.

The OMB fiscal impact statement estimated an annual revenue loss of \$108,500 in the near term, although this appears to be based only on energy generated by solar electric systems. This number could rise substantially as more homeowners and businesses install various forms of renewable energy sources.

Issues

1) Should this exemption be limited to power consumed on the site where it is generated?

As introduced, Bill 22-13 would exempt from the County fuel-energy tax energy generated from a renewable source (as defined in § 7-701(1) of the Maryland Public Utility Article) if:

- the energy is generated in the County, and
- the energy is delivered to or used by an end user in the County. See ©2, lines 29-31.

At the hearing Councilmember Leventhal, who signed on as a co-sponsor of this Bill, noted that the now-unfunded County Clean Energy Rewards program was adopted because, at

the time, the Council was advised that it could not exempt energy from renewable sources from the fuel-energy tax. Stan Edwards of the County Department of Environmental Protection responded that the proposed exemption in this Bill is limited to on-site, "behind the meter" production that Pepco (or another carrier) does not transmit.

The Executive's fiscal and economic impact statements (see ©6-9) note that its purpose is to exempt from the fuel-energy tax those residential and commercial energy providers who generate energy (for their own or others' use) by installing certain renewable energy sources, such as solar photovoltaic panels. If, however, a business or residence generates more electricity than it uses, the excess power is sent through the electrical grid and distributed to other customers.

If that excess power is later delivered to or used by an end user in the County, Bill 22-13 would exempt it from the fuel-energy tax. However, distributors (such as Pepco) argue that they cannot identify the end user of any specific electricity and cannot determine whether that end user is located in the County. Since under the current law (see ©3, lines 27-28), the tax is applied to quantities of energy measured at the point of delivery for final consumption in the County, this language does not seem to pose a problem.

Pepco suggested an amendment to work around this issue and clarify which electricity is taxed by inserting the following sentence on ©3, line 28:

For an electric company (as defined in state law), the rates of tax apply to the net consumption that is used to calculate each consumer bill.

Consistent with the original intent of this Bill, this amendment would exempt "behind the meter" electricity from the fuel-energy tax. Executive branch staff and the County Attorney confirmed that this amendment is consistent with, and does not change their interpretation of, current County law.

2) Should this exemption be limited to power produced by residential and other small producers?

Bill 22-13 as introduced is drafted broadly enough to exempt a large commercial producer of renewable energy located in the County from the fuel-energy tax. One speaker at the hearing (see Breiner testimony, ©14) noted that the exemption in this Bill could benefit, for example, the Town of Poolesville if it goes ahead with plans to lease a large solar array to provide power for town government users. Depending on the degree of future development of on-site solar and wind power sources in the County, especially by non-residential users such as shopping centers, the fuel-energy revenue loss (and the incentive for renewable energy use) could be substantial.

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Expedited Bill No. 22-13
Concerning: Taxation – Fuel Energy Tax
Revised: 7-1-13 Draft No. 1
Introduced: July 9, 2013
Expires: January 9, 2015
Enacted: _____
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 and Councilmember Leventhal

AN EXPEDITED ACT to:

- (1) exempt energy that is generated from certain renewable energy sources from the fuel energy tax; and
- (2) generally amend County law regarding the fuel energy tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-14

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 system. The rates of tax apply to the quantities measured at the
28 point of delivery for final consumption in the County.

29 (4) The tax does not apply to energy that is generated from a
30 renewable source in the County and delivered to or used by an
31 end user in the County. Renewable source means a “Tier 1
32 renewable source” as defined in Section 7-701(l) of the Public
33 Utilities Article of the Maryland Code or any successor
34 provision.

35 * * *

36 **Sec. 2. Expedited effective date; applicability.**

37 (a) The Council declares that this legislation is necessary for the immediate
38 protection of the public interest. This Act takes effect on the date when
39 it becomes law.

40 (b) This Act applies to energy delivered before or after this Act takes effect.

41 *Approved:*

42 _____
43 Nancy Navarro, President, County Council Date

44 *Approved:*

45 _____
46 Isiah Leggett, County Executive Date

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

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 22-13

Taxation -- Fuel Energy Tax -- Renewable Energy Sources

DESCRIPTION: Bill 22-13 will create an exemption from the fuel energy tax for energy that is generated from a renewable energy source.

PROBLEM: The current version of the fuel energy tax imposes the tax on all energy that is generated, manufactured or supplied from a renewable energy source.

GOALS AND OBJECTIVES: To exempt energy from the fuel energy tax that is generated from a renewable energy source.

COORDINATION: Department of Environmental Protection and Department of Finance.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be requested.

SOURCE OF INFORMATION: Bob Hoyt, Department of Environmental Protection

APPLICATION WITHIN MUNICIPALITIES: Applicable.

PENALTIES: None.

BILL



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

073040

MEMORANDUM

June 21, 2013

Isiah Leggett
County Executive

RECEIVED
MONTGOMERY COUNTY

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TO: Nancy Navarro, Council President
FROM: Isiah Leggett, County Executive 
RE: Proposed Legislation – Fuel Energy Tax Exemption for Renewable Energy Sources

I am transmitting for Council introduction a bill that creates an exemption from the County's fuel energy tax for energy that is generated from a renewable energy source provided the energy is generated within the boundaries of the County and is used by an end user in the County. I am also attaching the Legislation Request Report and Fiscal and Economic Impact Statements for the bill.

The bill will create an exemption from the fuel energy tax for energy that is created by a renewable energy source. The renewable energy sources are defined in Section 7-701(l) of the Public Utilities Article, which include among other things, electricity that is created by solar energy.

I would appreciate your consideration of this bill and if you have any questions or need additional information, do not hesitate to contact Bob Hoyt, Director, Department of Environmental Protection, at 240-777-7781.

Attachments: (4)

- c: Joseph Beach, Director, Department of Finance
- Marc Hansen, County Attorney
- Bob Hoyt, Director, Department of Environmental Protection
- Jennifer Hughes, Director, Department of Management and Budget

Fiscal Impact Statement
Council Bill xx-13, Taxation – Fuel Energy Tax

1. Legislation Summary.

The legislation exempts from the fuel energy tax energy that is generated from a renewable energy source. The legislation would exempt solar electricity from the fuel tax.

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 Bill does not have an expenditure impact. Currently, the County does not collect the fuel energy tax on energy generated by solar electricity systems. The County Attorney, however, has determined that electricity generated by solar systems is subject to the tax. Based on currently available industry data, the best estimate is that \$108,500 in fuel energy tax revenue would be exempt under this Bill. Since the solar industry continues to expand, the tax exemption could increase over time.

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

Revenues for the next six fiscal years are difficult to project, given that solar energy generation is a relatively small segment of energy generation in the County. Assuming annual growth of 10 percent, uncollected fuel energy tax revenue is estimated to be \$837,170 over six years.

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

This legislation does not affect retiree pension or group insurance costs.

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

The legislation does not authorize future spending.

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

There is no additional staff time needed to implement the bill.

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

The legislation does not establish new staff responsibilities.

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

Not applicable.

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

A key variable would be the number of solar electricity systems installed in the County. The estimate is based on Maryland Energy Administration data indicating 6500 kW of solar capacity in 2012. Growth in solar electricity capacity will result in increased fuel energy tax exemptions.

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

See item number 9 above.

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

See numbers 2 and 3 above.

12. Other fiscal impacts or comments.

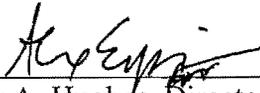
Not applicable.

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

Erika Lopez-Finn, Office of Management and Budget;

Robert Hagedoorn, Department of Finance;

David Platt, Department of Finance



Jennifer A. Hughes, Director
Office of Management and Budget

5/30/2013
Date

Economic Impact Statement
Bill xx-13, Fuel Energy Tax

Background:

This legislation would create an exemption from the fuel energy tax for energy that is generated from a renewable energy sources located within the County, primarily solar photovoltaic panels, and generally amend County law regarding the fuel energy tax

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

- Maryland Energy Administration (MEA) solar grant database and Montgomery County Department of Environmental Protection (DEP) data on large systems being installed.
- DEP estimates that as of 2013 current installed solar panel capacity is 6,500 kilowatts (kW), of which approximately 5,500 kW is residential and 1,000 kW is commercial.. A precise forecast of additional installed capacity is difficult; although it is expected to increase through 2016, when current federal incentives are due to expire. Other sources of clean energy subject to the exemption are minor compared to solar.

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

- The amount of additional capacity from the installation of solar panels.
- The price of electricity from energy distributors to residential and commercial customers.
- The County's tax rate for electricity usage by residential and commercial customers.

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

- The legislation may stimulate investment for solar panels by residential and commercial users because it clarifies the imposition of the County's energy tax on the generation of electricity from solar panels. The Bill exempts the generation of electricity from solar panels from the County's energy tax. That exemption would decrease energy expenses and increase incomes for both residential and commercial users of solar panels all other things being equal.
- With the exemption from the County's energy tax, the demand for solar panels could increase all other things being equal. Such an increase in demand would benefit local supply and construction companies and increase business income.

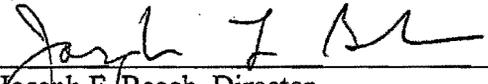
**Economic Impact Statement
Bill xx-13, Fuel Energy Tax**

- While the stimulation in investment for solar panels may have an economic impact attributed to the exemption, the total impact on the County's economy through employment, spending, investment, incomes, and property values may be modest.

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

- The Bill could have a modest positive economic impact.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance



Joseph F. Beach, Director
Department of Finance

5/30/13
Date

yard materials, grain, legumes, sugar, and other crop by-products or residues; or

4. gas produced from the anaerobic decomposition of animal waste or poultry waste; or

(ii) a plant that is cultivated exclusively for purposes of being used at a Tier 1 renewable source or a Tier 2 renewable source to produce electricity.

(2) "Qualifying biomass" includes biomass listed in paragraph (1) of this subsection that is used for co-firing, subject to § 7-704(d) of this subtitle.

(3) "Qualifying biomass" does not include:

- (i) unsegregated solid waste or postconsumer wastepaper; or
- (ii) an invasive exotic plant species.

(i) *Renewable energy credit.* — "Renewable energy credit" or "credit" means a credit equal to the generation attributes of 1 megawatt-hour of electricity that is derived from a Tier 1 renewable source or a Tier 2 renewable source that is located:

- (1) in the PJM region; or
- (2) outside the area described in item (1) of this subsection but in a control area that is adjacent to the PJM region, if the electricity is delivered into the PJM region.

(j) *Renewable energy portfolio standard.* — "Renewable energy portfolio standard" or "standard" means the percentage of electricity sales at retail in the State that is to be derived from Tier 1 renewable sources and Tier 2 renewable sources in accordance with § 7-703(b) of this subtitle.

(k) *Renewable on-site generator.* — "Renewable on-site generator" means a person who generates electricity on site from a Tier 1 renewable source or a Tier 2 renewable source for the person's own use.

(k-1) *Solar water heating system.* — (1) "Solar water heating system" means a system that:

- (i) is comprised of glazed liquid-type flat-plate or tubular solar collectors as defined and certified to the OG-100 standard of the Solar Ratings and Certification Corporation;
- (ii) generates energy using solar radiation for the purpose of heating water; and
- (iii) does not feed electricity back to the electric grid.

(2) "Solar water heating system" does not include a system that generates energy using solar radiation for the sole purpose of heating a hot tub or swimming pool.

(l) *Tier 1 renewable source.* — "Tier 1 renewable source" means one or more of the following types of energy sources:

- (1) solar energy, including energy from photovoltaic technologies and solar water heating systems;
- (2) wind;
- (3) qualifying biomass;
- (4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;
- (5) geothermal, including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source;

(6) ocean, including energy from waves, tides, currents, and thermal differences;

(7) a fuel cell that produces electricity from a Tier 1 renewable source under item (3) or (4) of this subsection;

(8) a small hydroelectric power plant of less than 30 megawatts in capacity that is licensed or exempt from licensing by the Federal Energy Regulatory Commission;

(9) poultry litter-to-energy;

(10) waste-to-energy; and

(11) refuse-derived fuel.

(m) *Tier 2 renewable source*. — “Tier 2 renewable source” means hydroelectric power other than pump storage generation. (2004, ch. 487, § 1; ch. 488, § 1; 2005, ch. 266; 2007, chs. 119, 120; 2008, ch. 125, § 2; ch. 126, § 2; chs. 127, 128, 135, 136; 2011, chs. 65, 407, 408, 519; 2012, chs. 556, 557.)

Effect of amendments.

Section 2, chs. 125 and 126, Acts 2008, effective January 1, 2011, made identical changes. Each reenacted (a) without change; and deleted “or in a state that is adjacent to the PJM region” at the end of (i)(1).

Chapter 65, Acts 2011, enacted April 12, 2011, and effective from date of enactment, substituted “subsection” for “section” in (h)(2).

Chapter 519, Acts 2011, effective October 1, 2011, added (l)(10) and (l)(11); rewrote (m); and made related changes.

Chapters 407 and 408, Acts 2011, effective January 1, 2012, made identical changes. Each reenacted (a) without change; added (k-1); and in (l)(1) added “energy, including energy from photovoltaic technologies and solar water heating systems.”

Chapters 556 and 557, Acts 2012, effective October 1, 2012, made identical changes. Each reenacted (a) without change; added (c-1); and in (l)(5) added “including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source.”

Editor’s note.

Section 4, ch. 65, Acts 2011, provides that “the provisions of this Act are intended solely to correct technical errors in the law and there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act.”

Section 2, chs. 407 and 408, Acts 2011, provides that “this Act shall apply only to solar

water heating systems that are commissioned on or after June 1, 2011.”

Section 3, chs. 407 and 408, Acts 2011, provides that the acts shall take effect January 1, 2012.

Chapters 407, 408, and 519, Acts 2011, all amended (l). None of the chapters referred to the others, and effect has been given to all, as they amended different portions of (l).

Section 2, chs. 556 and 557, Acts 2012, provides that “this Act shall apply only to geothermal heating and cooling systems that are commissioned on or after January 1, 2013.”

Bill review letter. — Chapters 556 and 557, Acts 2012 (S.B. 652 and H.B. 1186), effective October 1, 2012, was approved for constitutionality and legal sufficiency, even though a severable portion may violate the Commerce Clause of the United States Constitution. The bills add geothermal heating and cooling pumps that must be connected to the distribution grid serving Maryland as RPS resources that qualify for REC credits. A Commerce Clause issue is raised because the bills appear to prohibit certain types of out-of-state geothermal heating and cooling systems that are not connected to the distribution grid serving Maryland from qualifying for REC credits. Even though the size of the impact of this limitation upon interstate commerce could be minimal, it is possible a court would find that the bills, in part, violate the Commerce Clause. (Letter of Attorney General dated May 10, 2012.)

University of Baltimore Law Forum. — For an article, “Protecting Maryland’s Environment: A Holistic Solution,” see 40 U. Balt. L. F. 205 (2010).

**Testimony on Behalf of County Executive Isiah Leggett
Regarding Expedited Bill 22-13, Fuel Energy Tax - Renewable Energy Resources**

**Stan Edwards, Chief
Division of Environmental Policy & Compliance
Department of Environmental Protection**

July 30, 2013

Good afternoon. My name is Stan Edwards. I am the Chief of the Division of Environmental Policy and Compliance in the Department of Environmental Protection. I am testifying on behalf of the County Executive in support of Expedited Bill 22-13, Fuel Energy Tax - Renewable Energy Resources.

Under current law, the fuel-energy tax applies to all electricity that is delivered for final consumption in the County, and the tax is imposed on persons who distribute, produce, transmit, manufacture or supply electricity in the County. When the tax was adopted in 1971, electricity subject to taxation was generated by large, fossil fuel-based power plants and distributed to users in the County by regulated public utilities. To a large extent, this remains true today. However, with the advent of new technologies and financing mechanisms for solar photovoltaic systems, a number of homes and businesses in the County are now generating electricity on-site, supplementing the power delivered by their utilities. Because this on-site power does not come through the utility grid, it has not historically been taxed.

However, based on a recent review of the fuel-energy tax law by the Office of the County Attorney, it was determined that electricity generated by such systems is subject to the tax. Although electricity produced by these systems does not come through the utility grid, which is the only current mechanism for imposing the tax, current law does not expressly exempt this method of electricity production from taxation.

To our knowledge, when the fuel-energy tax was created in 1971, its applicability to on-site solar generated electricity was not considered by the County Council -- and the County has never collected revenues on this kind of electricity. Applying the fuel-energy tax to this kind of solar generated electricity would raise several issues. First, imposition of the tax could dramatically decrease demand for solar, which is contrary to previous County policy positions encouraging such systems. The solar industry has been marketing systems assuming the tax does not apply, since it has never been charged. This has been a significant incentive to install solar, including systems on County facilities.

Second, since these systems are "off the grid," collection of the tax would require the filing of some form of tax return and tax remittance to the County. Enforcement would require development of a system to track solar installations and confirm their generating capacity. While collection of the tax might result in additional revenue to the County, currently estimated to be \$100,000 to \$200,000, much if not all of this would be spent to collect, verify, and enforce the tax.

Exempting on-site solar systems from the tax would encourage continued expansion of solar systems in the County. Such systems benefit the environment by reducing greenhouse gas emissions and local criteria air pollutants, create jobs for local companies and reduce the strain on the utility grid, which is a priority in the region. Larger solar systems combined with new storage technologies may allow some organizations to minimize the risk of power failures. Finally, solar energy may provide more predictable energy costs for businesses and individuals.

I urge you to support Expedited Bill 35-12 and would be happy to address any questions the Council may have about the bill.



A PHI Company

Maryland Affairs
701 Ninth Street, NW
Washington, DC 20068
202-872-2524 Phone

Jerry Pasternak
Vice President Pepco Region - Maryland

July 30, 2013

The Honorable Nancy Navarro
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources

Dear President Navarro:

The Potomac Electric Power Company (Pepco) submits the following comments on Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources.

At Pepco, environmental stewardship and sustainability are fundamental principles that guide our business and enable our success, both for today and into the future. We are committed not only to delivering safe and reliable electricity, but also to helping the jurisdictions we serve become models of innovative environmental policies and practices.

Renewable energy, such as wind and solar, has the potential to provide us with cleaner air, a more diverse energy portfolio, and less dependence on foreign fossil fuels. Many of our customers generate their own electricity using "green" or renewable resources, such as solar panels. We partner with customers who want to install renewable-powered generators through our Green Power Connection™, a team of specialists dedicated to working with customers to ensure safety and compatibility of their systems with ours, as well as the installation of a net energy capable meter.

We support the intent of this bill to encourage generation and consumption of renewable energy by lowering its cost through fuel-energy tax relief. We have been working with both Executive and Council staff on how to best implement that laudable goal, and we look forward to continuing that dialogue so that we can agree on amended language that establishes a mechanism to implement the goal in a manner that addresses our concerns.

Lastly, given the County's fuel-energy tax, we support the dedicated use of those revenues on energy-related matters, rather than on General Fund expenditures. Incentivizing county residents to generate and consume renewable energy is one such measure and a step in the right direction.

Sincerely,


Jerry Pasternak

Testimony of Joyce Breiner
Public Hearing - Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources
July 30, 2013

Council President Berliner and members of the County Council, thank you for the opportunity to testify in favor of the proposed Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources.

In Feb 2013, my husband and I had a 12.48 kW residential solar system installed on our home by Standard Solar whose headquarters is in Rockville. As of yesterday, we have produced 7,506 kWh of electricity and currently carry a credit with the electric utility of 980 kWh. In addition to being on target to produce 95% or more of our home's annual electricity needs, the solar system meets most of our transportation fuel needs as well, in the form of electricity for our two electric cars.

We chose Standard Solar, in part, because they are a local company with local jobs we could support.

Promoting distributed renewable energy sources is the name of the game in this time of increased awareness of the urgent need to do what individuals can do to address climate change. This bill does that.

With fiscal budgets still tight, one of the most effective and advantageous things the county government can do to promote this effort is to refrain from taxing residents, businesses and local governments who take these bold moves toward renewables.

As you may know, the Town of Poolesville is also negotiating the lease of a 1.1 mWh solar array to produce enough energy to cover the town government's 6 largest electric bills. Passing Bill 22-13 would benefit my town and its citizens as well.

To address the climate change issue, individuals, towns, and governments from the county to the national level all need to step up to the plate. Our children and grandchildren will one day be asking what we did when we understood the challenges of climate change. The passing of this bill will be one of the many things we hopefully will be able to point to having accomplished.

Please pass this bill without delay. Thank you.