MEMORANDUM

April 1, 2021

TO: Tom Hucker, Council President
FROM: Marc Elrich, County Executive
SUBJECT: Introduction of XX-21, Environmental Sustainability – Building Energy Use Benchmarking and Performance Standards – Amendments

It is my pleasure to transmit the attached legislation (XX-21, Building Energy Use Benchmarking and Performance Standards – Amendments) to modify the County’s current Building Energy Benchmarking Law. The legislation will: expand the number of buildings covered by benchmarking requirements, establish energy performance standards for existing buildings, and create a Building Performance Improvement Board.

During my March 5, 2021 “State of the County” address, I stated that if it were not for COVID-19, climate change would have been the natural disaster headline of the year, decade, and century. This was and still is an existential threat to our lives. Our 2018 greenhouse gas inventory in Figure 1 shows that commercial building energy use accounts for 26 percent of community-wide emissions.1 As described in the County’s draft Climate Action Plan released in December 2020, Building Energy Performance Standards (BEPS) are a foundational policy that will directly reduce our community-wide greenhouse gas emissions from the existing built environment and get us one step closer to eliminating greenhouse gas emissions by 2035.2 Through BEPS requirements and accompanying tools to help them succeed, owners in the County will reduce the climate impacts of their buildings through deep energy retrofits, operational improvements, and tenant engagement.

The attached legislation establishes a thoughtful and stakeholder-supported framework of BEPS in Montgomery County, but additional data analyses are required to set aggressive but realistic standards for buildings, which will be accomplished through accompanying regulations. This legislation is strongly

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supported by the County’s Climate Change Coordinator and the Department of Environmental Protection (DEP).

We realize that the current COVID-19 pandemic has presented an unprecedented challenge to residents and businesses in Montgomery County. Our County’s climate emergency is another unprecedented challenge that we must tackle—one where a BEPS policy is a key strategy for both reducing greenhouse gas emissions and helping building owners and their tenants become more resilient to economic shocks with energy-efficient buildings. The County strongly supports advancing BEPS at this time to give building owners as much time as possible to strategize for energy-focused building improvements in their long-range capital planning cycles.

Background

Montgomery County was the first county in the nation to adopt a Building Energy Benchmarking law that requires owners of certain commercial buildings to report energy use to the County each year. The County led by example by benchmarking its buildings first by June 2015. The first deadline for private buildings was June 2016.

Several jurisdictions have now implemented “beyond benchmarking” policies that compel building owners to take action to improve their buildings’ energy performance in addition to reporting data. BEPS are policies that set a minimum energy performance threshold for buildings, requiring covered buildings to meet or maintain newly established efficiency standards. To date, BEPS policies have been adopted in Washington, D.C., New York City, St. Louis, and Washington state—these jurisdictions are just beginning to implement their policies. As with energy benchmarking, Montgomery County is poised to become the first county to pass BEPS legislation and join the small group of innovative jurisdictions adopting such a strategy.

In drafting this legislation, DEP engaged stakeholders in a BEPS workgroup in early 2020 to solicit feedback on the policy framework and elements of the proposed legislation. Stakeholders included representatives from the impacted community including the commercial and multifamily building communities and those that serve them including advocacy and industry groups, utility representatives, energy contractors, and County government staff. DEP was grateful to receive free technical assistance from the Institute for Market Transformation (IMT) to help present policy options, facilitate stakeholder meetings, and provide expert guidance on legislative questions.

Policy Overview

The current Building Energy Benchmarking law covers roughly 100 million square feet of commercial building area and requires County- and privately-owned non-residential buildings 50,000 square feet and greater to benchmark annually. Proposed amendments in this legislation would expand benchmarking to smaller commercial buildings by reducing the square footage threshold from 50,000 to 25,000 square feet, add multifamily residential buildings, and include some previously exempted building types. These modifications will add approximately 1,000 new covered buildings into the benchmarking program, eventually covering roughly 250 million square feet or 85% of commercial and multifamily floor area in the County. Figure 2 below illustrates the buildings that would be covered by the amendments:
Figure 2. Buildings that would be covered by the amended Benchmarking Law.

Building groups by type and total floor area: Group 1 and 2, in the bold black box, are currently covered by the Energy Benchmarking Law. Groups 3, 4, and 5, in the dotted boxes, would be newly covered under the proposed amendments. Source of Rentable Building Area: CoStar.

Over time, all buildings covered by the Building Energy Benchmarking Law would become subject to Building Energy Performance Standards with a phased approach.

Based on stakeholder input and guidance from IMT, the proposed BEPS policy includes the following elements:

- Long-term performance standards that balance the climate emergency need for immediate action with building owners’ need for flexibility in how they manage their buildings. Long-term standards will also give the County time to educate and engage the impacted community;

- Performance standards based on site energy use intensity by building type that measure improvements that are under building owners’ and occupants’ direct control;

- Full credit for onsite solar generation as a deduction from site energy use in calculating progress towards BEPS;

- Phasing in of newly covered buildings to first familiarize owners with energy benchmarking, reporting, then with building energy performance standards;

- A performance baseline that averages two years with the highest energy use consumption to recognize and credit variability in operations and hold owners harmless for exceptional circumstances stemming from the pandemic or other events outside the owners’ control;
A process by which covered building owners who cannot reasonably meet one or more of the applicable interim or final performance standards due to economic infeasibility or other circumstances beyond the owner’s control can submit building performance improvement plans (BPIPs); and

A building performance improvement board made up of members of the covered community, energy professionals, and advocates who will advise DEP on BEPS implementation, technical review, and complementary programs and policies.

While the proposed legislation outlines the parameters of BEPS and creates a framework, some facets will be set via regulation to be established at a later date. These include:

- Building type groupings with shared characteristics that facilitate the implementation and enforcement of BEPS;
- Numerical performance standards for each building type;
- Required format for BPIPs;
- Parameters for economic feasibility or other factors that will dictate circumstances under which BPIPs will be allowed; and
- Adjustments or assistance specific to under-resourced building sectors, such as affordable housing, small businesses, houses of worship, and non-profits.

Finally, the County is pursuing state-enabling legislation to implement “poor performance payments” beyond the current Class A violations for non-compliant buildings. DEP envisions that these non-compliance payments would be directed to a dedicated fund to support a technical assistance hub and to help under-resourced buildings with BEPS compliance.

Impact

Benchmarking leads to a better understanding of energy trends and performance among building owners and managers and has resulted in energy savings of roughly 2% per year in consistently benchmarked facilities. See the 2019 Energy Benchmarking Report (www.tinyurl.com/2019BBreport) for more information about how benchmarked buildings in the County are performing.
Buildings benchmarked in EPA’s ENERGY STAR Portfolio Manager tool that earn the ENERGY STAR label also command higher rental rates, benefit from higher sales prices, and see higher occupancy rates—all of which indicate a building that is more economically resilient than non-ENERGY STAR labeled buildings—as shown in Figure 3 below:

![Figure 3. Added Value of ENERGY STAR-Labeled Commercial Buildings in the U.S. Market. Source: Institute for Market Transformation, 2016.](image)

Despite these modest efficiency gains through benchmarking, existing commercial buildings account for roughly one quarter of Montgomery County community-wide greenhouse gas emissions. Existing policies fall short in their ability to drive the major efficiency improvements and GHG reductions that are needed from buildings to achieve the County’s climate goals. Achieving these ambitious goals requires swift and decisive action, especially considering that between now and 2035, there may only be one opportunity to replace most equipment at the end of its useful life. While many jurisdictions like Montgomery County have enacted ambitious green building codes for new construction, similar mandates for existing buildings are needed to achieve climate targets. Requiring energy improvements to the commercial building sector will result in greenhouse gas emission reductions from the built environment.

BEPS is also expected to produce many co-benefits:3 reduced utility and operating costs for building owners and tenants; improved, more resilient, and higher-value building stock in the County;

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improved human health from better indoor air quality and reduced air pollution; and increased local economic activity and green jobs related to building design, construction, energy efficiency, and other trades related to the building upgrade market.\(^4\)

DEP has contracted Steven Winter Associates to undertake comprehensive data analysis on the magnitude of energy savings and greenhouse gas emission reductions achievable via BEPS, as well as a cost-benefit analysis of BEPS implementation. This analysis will be completed in summer 2021.

**Resources**

Along with new performance requirements, DEP plans to provide additional resources to support building owners and managers in understanding the requirements of BEPS and identifying energy improvements in their buildings. Washington, D.C. has launched a Building Innovation Hub ([https://buildinginnovationhub.org](https://buildinginnovationhub.org)) to support DC’s BEPS program. The Hub aims to meet the current needs of the building industry while simultaneously helping the industry put in place the innovative solutions needed to build and operate high-performing buildings. DEP has had initial conversations to coordinate with the Hub and DC on leveraging existing resources and expanding the Hub to serve a regional audience. This expansion will be especially helpful for owners with properties in both jurisdictions.

Additionally, as BEPS will cover regulated and non-regulated affordable housing buildings, small businesses, houses of worship, and non-profits, DEP is exploring additional technical assistance and support for under-resourced building sectors.

To implement BEPS and serve the building community, the accompanying Fiscal Impact Statement estimates that the legislation would require four additional staff members to undertake outreach and education, provide technical plan review, and support program implementation. Operating expenses are also identified for technical assistance hub for building owners, support for data and engineering analyses, database development, and outreach materials.

**Timing**

To keep with the schedule proposed in the legislation, newly covered Group 3 & 4 buildings (commercial buildings 25k-50k square feet and multifamily buildings 250,000+ square feet) must begin benchmarking and report calendar year 2021 data by June 1, 2022. DEP plans to begin outreach to the new covered building community as soon as this legislation is enacted.

In advance of beginning BEPS on January 1, 2023, DEP will set a BEPS baseline performance for each building in Groups 1 and 2 by averaging that building’s 2 years with the highest normalized net site EUI between calendar year 2018 and calendar year 2021. Groups 1 and 2 consist of buildings covered by the current Benchmarking law (County-owned and private commercial buildings 50,000 gross square feet and larger). Buildings in Groups 1 and 2 will be required to meet the first interim standard by December 31, 2026. Prior to 2023, DEP will also employ an objective formula to set two interim standards for each building. Figure 4 below visualizes the benchmarking and BEPS timing in the legislation:

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Figure 4. Proposed BEPS timeline.

Under the timeline proposed in the bill, the County Executive will issue Method (2) regulations establishing building types, final performance standards for each building type, and other details no later than June 1, 2022.

Modifications to the proposed timeline or delays in bill adoption may result in delays to phasing in building groups, creating standards, or forming the building performance improvement board, reducing the climate benefits of BEPS.

If you have any questions, please contact Stan Edwards in the Department of Environmental Protection at 240-777-7748 or stan.edwards@montgomerycountymd.gov.
COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: [Click - Type sponsor(s)]

AN ACT to:

(1) expand the number of buildings covered by benchmarking requirements;
(2) establish energy performance standards for covered buildings;
(3) create a Building Performance Improvement Board; and
(4) generally revise County law regarding environmental sustainability.

By amending
Montgomery County Code
Chapter 18A, Environmental Sustainability

By adding
Montgomery County Code
Chapter 18A, Environmental Sustainability

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


18A-38[A]. Intent.

The intent of this Article is to:

(a) * * *

(b) engage the commercial and multifamily residential building sector with building energy information crucial to adopting energy conservation and efficiency opportunities;

(c) * * *

(d) strengthen the local economy by encouraging more efficient business operations and providing new opportunities for local businesses that provide energy conservation and efficiency services; [and]

(e) recognize building owners that have made investments to improve their building energy performance and expand in-house capacity for energy management[.]; and

(f) improve the energy performance of covered buildings through established building energy performance standards, thus reducing greenhouse gas emissions from the built environment and helping the County achieve its ambitious climate action goal of zero greenhouse gas emissions by 2035.


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

Affordable housing means a dwelling unit whose sale or rental price does not exceed that of a moderately priced dwelling unit under Chapter 25A or group senior assisted housing.
Benchmark means to track and input a building’s energy consumption data and other relevant building information for 12 consecutive months, as required by the benchmarking tool, to quantify the building’s energy use.

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

Building means:

(1) any single structure utilized or intended for supporting or sheltering any occupancy, except if a single structure contains two or more individually metered units operating independently that have stand-alone heating, cooling, hot water, and other mechanical systems, and no shared interior common areas, or;

(2) two or more structures utilized or intended for supporting or sheltering any occupancy, that:

(A) are serviced by a common energy meter,

(B) have a common heating or cooling system,

(C) share interior common areas, or

(D) whose configuration otherwise prevents an accurate determination of the energy consumption attributable to each individual structure.

Building energy performance standard means a policy that sets a minimum required level of energy performance for covered buildings.

Building performance improvement plan means a document in a format approved by the Director submitted by a covered building owner and approved by the Director as described in this Article.
Building type means a category of covered buildings subject to the same final performance standards.

* * *

County-owned covered building means [any] a building owned by the County[, or any group of buildings owned by the County that have the same property identification number, that] whose gross floor area equals or exceeds 50,000 square feet.

Covered building means [any] a County-owned building, Group 1 [covered building], [or] Group 2, Group 3, Group 4, or Group 5 covered building. [Covered building does not include any building with more than 10% of total building square footage which is used for

(1) public assembly in a building without walls;

(2) warehousing;

(3) self storage; or

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

* * *

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

Final performance standard means the numeric value of site EUI that each covered building must ultimately achieve or exceed.

Gross floor area means the total building square footage measured between the principal exterior surfaces of the enclosing fixed walls of a building. Gross floor area consists of all areas inside the building, including lobbies, tenant areas, common areas, meeting rooms, break rooms, the base level of atriums, restrooms, elevator shafts, stairwells, mechanical equipment areas, basements,
and storage rooms. *Gross floor area* does not include exterior spaces, balconies, patios, exterior loading docks, driveways, covered walkways, outdoor play courts (e.g., tennis, basketball), parking, the interstitial space between floors (which house pipes and ventilation), and crawl spaces. *Gross floor area* is not the same as rentable space, but rather includes all area inside the building(s).

*Group 1 covered building* means [any] a privately owned nonresidential covered building[, or any group of nonresidential buildings that have the same property identification number, not owned by the County that] whose gross floor area equals or exceeds 250,000 [in total building] square [footage] feet.

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

*Group 3 covered building* means:

1. a privately owned nonresidential covered building whose gross floor area equals or exceeds 25,000 square feet but is less than 50,000 square feet, or
2. a privately owned nonresidential covered building whose gross floor area equals or exceeds 50,000 square feet and whose use type was previously exempted under this Article.

*Group 4 covered building* means a privately owned multifamily residential or mixed-use covered building whose gross floor area equals or exceeds 250,000 square feet.
Group 5 covered building means a privately owned multifamily residential or mixed-use building whose gross floor area equals or exceeds 25,000 square feet but is less than 250,000 square feet.

Interim performance standard means the numeric value of site EUI which covered buildings must achieve or exceed by a fixed date every four (4) years from a covered building’s performance baseline.

Interior common areas means shared space within a building such as hallways, lobbies, stairwells, and other shared amenities (e.g., gyms, laundry rooms, party rooms).

Mixed-use building means a building that contains both residential units and commercial space.

Net site EUI means site energy use minus energy generated from onsite solar sources divided by the total gross floor area of the building expressed in kBtu/GSF.

Newly constructed covered building means a covered building whose owner has completed construction, received a use and occupancy permit, and is able to begin benchmarking the building’s energy use and other characteristics.

Normalized net site energy means the site energy use by the covered building normalized for weather and other characteristics within the limits of the capabilities of the benchmarking tool and normalized for other factors as determined by the Department minus energy generated from onsite solar sources.

Normalized net site EUI means the total normalized net site energy use consumed by a covered building in one year divided by the total gross floor area of the building expressed in kBtu/GSF.
Owner means an individual or legal entity in whose name a building is titled, or in the case of a community association, the governing body of either a condominium or a cooperative housing corporation.

Performance baseline means the normalized net site EUI for a covered building averaged over two calendar years.

Performance metric means an objectively verifiable numeric measure of normalized site EUI to determine building performance.

Process load means energy consumed for bona fide purposes other than heating, cooling, ventilation, domestic hot water, lighting, appliances, office equipment, data centers, or other plug loads.

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Reported benchmarking information means the descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool regarding the building’s energy consumption, [and] efficiency, and performance. Reported benchmarking information includes the building identification number, address, gross floor area, energy performance score, site energy use intensity, and annual greenhouse gas emissions.

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

Site energy use means all energy used onsite by a covered building to meet the energy loads of a building, including electricity delivered to the building through the electric grid and generated onsite with renewable sources; natural gas; district steam; district hot and chilled water; diesel; propane; fuel oil; wood; coal; and other fuels used onsite. Site energy use does not include electricity used to charge vehicles.

Site energy use intensity or site EUI means a numeric value calculated by the benchmarking tool that represents the energy consumed by a covered building
relative to its size in terms of energy used per square foot of gross floor area per year.

*Tenant* means a person or legal entity occupying or holding possession of a building, part of a building, or premises under a rental agreement.

[Total building square footage] 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, total building square footage means the covered area. Total building square footage does not include any:

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.

**18A-38B. Applicability.**

This Article does not apply to a covered building for which more than 50% of the total gross floor area is used for:

(a) public assembly in a building without walls;
(b) industrial uses where the majority of energy is consumed for manufacturing, the generation of electric power or district thermal energy to be consumed offsite, or for other process loads; or
(c) transportation, communications, or utility infrastructure.

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

(a) *County-owned covered buildings.*

(1) No later than June 1, 2015, and every June 1 thereafter, the County must benchmark any County-owned covered building[s]
whose gross floor area equals or exceeds 50,000 square feet for the previous calendar year and report the benchmarking information to the Department.

(2) No later than June 1, 2022, and every June 1 thereafter, the County must benchmark any County-owned covered building whose gross floor area equals or exceeds 25,000 square feet but is less than 50,000 square feet for the previous calendar year and report the benchmarking information to the Department.

(b) * * *

(c) * * *

(d) Group 3 and Group 4 covered buildings. No later than June 1, 2022, and every June 1 thereafter, the owner of any Group 3 or Group 4 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(e) Group 5 covered buildings. No later than June 1, 2023, and every June 1 thereafter, the owner of any Group 5 covered building must benchmark the building for the previous calendar year and report the benchmarking information to the Department.

(f) Newly constructed covered building. Following the first full calendar year that energy data can be collected and that the building was occupied, on average, by at least one full-time-equivalent employee (40 person-hours per week) exclusive of security guards, janitors, construction workers, landscapers, and other maintenance personnel throughout the calendar year being reported, the owner of any newly constructed covered building must benchmark the building and report to the Department no later than June 1 of that following year, and every June 1 thereafter.
Waiver. [The Director may waive the benchmarking requirements of this Section if] For any time period for which the owner of a covered building documents, in a form required by regulation, [that the building] any of the conditions below, the Director may waive the benchmarking requirements of this Section[:].

1. [is in financial] Financial distress, defined as a building that:
   a. is the subject of a tax lien sale or public auction due to property tax arrearages;
   b. is controlled by a court appointed receiver; or
   c. was recently acquired by a deed in lieu of foreclosure;

2. [had average physical occupancy of less than 50% throughout the calendar year for which benchmarking is required] On average, less than one full-time-equivalent employee occupied the building during the calendar year being reported; [or]

3. The covered building is [new] newly [construction] constructed and has received its certificate of use and occupancy during the calendar year for which benchmarking is required[:]; or

4. The covered building was demolished or received its demolition permit during the calendar year for which benchmarking is required.

18A-42. Establishment of building energy performance standards.

(a) Requirement. The Department must develop and implement building energy performance standards for covered buildings. The standards must:

1. increase the energy efficiency of existing covered buildings and expedite the reduction of greenhouse gas emissions from the building sector:
(2) use normalized net site EUI as a performance metric wherever feasible or net site EUI if the Director determines that normalization is not practical as performance metric;

(3) account for onsite solar generation in the performance metric;

(4) use the benchmarking tool to report building energy performance to the County; and

(5) utilize available data sources and best practices to establish interim and final performance standards.

(b) Building types.

(1) No later than June 1, 2022, the County Executive must issue Method (2) regulations establishing building types for every covered building.

(2) Covered buildings within each building type must have shared characteristics that facilitate the implementation and enforcement of this Article. The Department may define one or more building types to be identical to ENERGY STAR property type categories.

(3) All covered buildings within the same building type category must be subject to the same final performance standards that facilitate the implementation and enforcement of this Article.

(c) Performance baseline. The performance baseline for each covered building must be calculated as follows:

(1) County-owned covered buildings whose gross floor area equals or exceeds 50,000 square feet, Group 1 covered buildings, and Group 2 covered buildings: Average of the 2 years with the highest normalized net site EUI between calendar year 2018 and calendar year 2021.
(2) County-owned covered buildings whose gross floor area is at least 25,000 square feet but not greater than 50,000 square feet, Group 3, and Group 4 covered buildings: Average of the 2 years with the highest normalized net site EUI between calendar year 2021 and calendar year 2023.

(3) Group 5 covered buildings: Average of the 2 years with the highest normalized net site EUI between calendar year 2022 and calendar year 2024.

(4) Newly constructed covered buildings: Average of the 2 years with the highest normalized net site EUI over the first 3 years of benchmarking reporting.

(d) Interim and final performance standards.

(1) No later than June 1, 2022, the County Executive must issue Method (2) regulations establishing final performance standards for each building type using the normalized site EUI performance metric wherever feasible or site EUI if the Director determines that normalization is not practical.

(2) The Department must calculate each interim performance standard for each covered building with the starting point set at the covered building’s performance baseline and continuing to the final performance standard.

(3) Each covered building must demonstrate progress towards the final performance standard by complying with interim performance standards every 4 years after the performance baseline year as follows:
(A) County-owned covered buildings whose gross floor area equals or exceeds 50,000 square feet, Group 1, and Group 2 covered buildings:

(i) Interim performance standards: December 31, 2026, and evaluated with June 1, 2027, benchmarking, and December 31, 2030, and evaluated with June 1, 2031, benchmarking.

(ii) Final performance standard: December 31, 2034, and evaluated with June 1, 2035, benchmarking.

(B) County-owned covered buildings whose gross floor area is at least 25,000 square feet but not greater than 50,000 square feet, Group 3, and Group 4 covered buildings:

(i) Interim performance standards: December 31, 2028, evaluated with June 1, 2029, benchmarking, and December 31, 2032, evaluated with June 1, 2033, benchmarking.

(ii) Final performance standard: December 31, 2036, evaluated with June 1, 2037, benchmarking.

(C) Group 5 covered buildings:

(i) Interim performance standards: December 31, 2029, evaluated with June 1, 2030, benchmarking, and December 31, 2033, evaluated with June 1, 2034, benchmarking.

(ii) Final performance standard: December 31, 2037, evaluated with June 1, 2038, benchmarking.
(D) Newly constructed buildings will be added to a coverage group (Group 1, Group 2, Group 3, Group 4, or Group 5) based on gross floor area and building type:

(i) Interim performance standards: Evaluated with the first interim standard of the building’s coverage group following creation of the performance baseline.

(ii) Final performance standard: Evaluated with the final performance standard of the building’s coverage group, if the performance baseline is created before the final performance standard.

(4) Covered buildings must maintain the final performance standards established by regulation.

(5) Covered buildings must demonstrate compliance with the interim and final performance standards by reporting building energy benchmarking data to the Department using the benchmarking tool. The Department must determine compliance by comparing the performance metric against the interim or final performance standards for the applicable building type.

18A-42A. Building Performance Improvement Board.

(a) Established. The County Executive must appoint, subject to confirmation by the Council, a Building Performance Improvement Board comprised of 15 voting members. Designees of the Department of Environmental Protection, Department of General Services, and Department of Permitting Services are ex officio nonvoting members of the Board.
(b) **Membership.** Each voting member of the Board must be a resident of the County or a member of the governing body or staff of an entity doing business in the County. The Board should include:

1. Representatives of local electricity or natural gas utilities;
2. Providers of energy efficiency, building resilience and/or renewable energy services or consulting;
3. Owners or managers of affordable housing;
4. Owners or managers of multi-family residential buildings containing market-rate units;
5. Nonresidential building owners or managers;
6. Technical building design or operations professionals;
7. Providers of facilities, mechanical, or similar engineering services;
8. Commercial or multi-family residential construction finance or investment professionals,
9. Representatives of nonprofit organizations dedicated to climate action, resiliency, public health, green building, economic development, or building decarbonization; and
10. Representatives of nonprofit organizations dedicated to racial equity or environmental justice.

(c) **Terms.** Each voting member serves a 3-year term beginning on January 1. Of the members first appointed, one-third must be appointed for 1-year terms, one-third must be appointed for 2-year terms, and one-third must be appointed for 3-year terms. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified. The Board must elect one
of its members as Chair to be who must serve as such for one calendar
year or until a successor is elected.

(d) **Procedures.** The Board must adopt rules to govern its procedures
including meeting frequency, managing Chair elections, establishing
committees, and other issues that pertain to Board governance.

(e) **Duties and responsibilities.** The Board must generally advise the
Department on implementation of building energy performance
standards. This includes providing recommendations to the Director on:

1. **Building type groupings;**
2. Interim and final performance standards for each building type;
3. Managing situations where ownership of a building is transferred
   or a building’s type changes;
4. Building performance improvement plan technical review and
   approval processes;
5. Complementary programs or policies, with particular attention to
   assistance or accommodations for challenged or under-resourced
   sectors, such as affordable housing, non-profit organizations, and
   small businesses; and
6. Enforcement of benchmarking requirements and performance
   standards.

(f) **Compensation.** The members of the Board serve without compensation.

18A-42B. **Building performance improvement plans.**

(a) If a covered building owner cannot reasonably meet one or more of the
applicable interim or final performance standards due to economic
infeasibility or other circumstances beyond the owner’s control, based
on guidelines established by regulation, the owner may submit a
proposed building performance improvement plan to the Department for
review and approval by the Director in consultation with the Building
Performance Improvement Board.

(b) A building performance improvement plan must include:

1. documentation of economic infeasibility or other circumstances
   beyond the owner’s control such that interim or final performance
   standards are not met;

2. a list of potential improvement measures, including engineering
   calculations of energy savings and a cost-benefit analysis of each
   potential improvement measure;

3. a plan and timeline for achieving energy improvements to the
   building’s performance that will provide cost-effective energy
   savings based on guidelines established by regulation, including
   the estimated savings to be realized by implementing all of the
   cost-effective measures identified in the plan; and

4. procedures for correcting any noncompliance or deviation from
   the plan.

(c) The owner must submit a building performance improvement plan to
the Department at least 90 days before the deadline for submitting
documentation of compliance with interim or final performance
standards.

(d) If, after consulting with the Building Performance Improvement Board,
the Director approves the building performance improvement plan, the
owner must record the building performance improvement plan as a
coventant in the County land records and deliver a certified copy of the
recorded plan to the Department. After the Director receives the
certified copy of the recorded plan, the covered building will be deemed
to be in compliance with the applicable interim or final performance
standards as long as the owner fulfills the terms of the building performance improvement plan within the timeline specified in the plan.

18A-42C. Extensions and adjustments.

(a) The Department may establish additional criteria recommended by the Building Performance Improvement Board for qualified affordable housing, non-profit buildings, and other buildings as appropriate to modify compliance with interim or final performance standards by regulation.

(b) The Director, in consultation with the Building Performance Improvement Board, may grant an extension or adjustment to an interim or final performance standard for a covered building whose owner submits a request along with documentation at least 90 days before the deadline for submitting documentation of compliance with an interim or final performance standard if any of the following conditions apply:

1. A demolition permit has been issued or a demolition of the building is planned before the deadline to comply with the next interim performance standard;

2. The building is in financial distress under Section 18A-39 (g)(1);

3. The building is exempt from real property taxes and the owner is able to certify by the statement of a certified public accountant or by sworn affidavit that the owner’s revenue less expenses for the previous 2 years was negative; or

4. The Director determines that strict compliance with those standards would be economically infeasible, as defined by regulation, due to circumstances beyond the owner’s control.

18A-[42]43. Annual report; disclosure of benchmarking and energy performance information.
(a) *Annual report required.* By October 1 of each year, the Director must submit a benchmarking and building performance report to the County Executive and County Council. The report must review and evaluate energy efficiency in covered buildings, including:

(1) summary statistics on the most recent reported energy benchmarking information, including information on the completeness and level of data quality of the building energy data being reported by building type;

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

(3) for County-owned covered buildings:

(A) the scores of County-owned covered buildings benchmarked; and

(B) whether the Director recommends any energy efficiency improvements for specific buildings; and

(4) building energy performance summary statistics, if an interim or final performance standard occurs for a covered building type in the current reporting cycle.

(b) *Disclosure of benchmarking and building energy performance standards information data.* The Director must make reported aggregated benchmarking and building energy performance standard [information] data readily available to the public, including on the open data website created under Section 2-154, and the Director may exempt information from disclosure only to the extent that disclosure is prohibited under federal or state law.

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

(2) any individually-attributable reported benchmarking or building energy performance standards information relating to a covered building if the disclosure of the covered building’s energy use would be harmful to the public interest and national security that contains a data center, or television studio that together exceeds 10% of the 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; and

(3) Building performance improvement plans and associated documentation attributable to an individual covered building.

18A-43A. Regulations; penalties.

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

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

18A-43B. Penalties; enforcement.

(a) A building owner must not knowingly provide false information required under this Article to the Department. The Director may revoke or modify an extension, adjustment, building performance improvement plan, or compliance with benchmarking or the interim or final performance standards in response to any false information provided by the building owner.
(b) Any violation of this Article is a Class A violation.


(a) Before a buyer signs a contract for the sale of a covered building as defined in Section 18A-38A, the seller must:

(1) disclose to the prospective buyer that the building is subject to building energy performance standards in Chapter 18A, Article 6;

(2) transfer the following records to the prospective buyer:

(A) the benchmarking property record from the benchmarking tool;

(B) documentation of data verification; and

(C) any other related records relevant to maintain compliance with Chapter 18A, Article 6; and

(3) provide to the prospective buyer the following information:

(A) performance baseline;

(B) interim and final performance standards; and

(C) building performance improvement plan.

(b) The prospective buyer must indicate, by signing an addendum to the contract or a separate section of the contract printed in boldface type, that the seller has made the disclosures and provided the information required by subsection (a).

Approved:

Tom Hucker, President, County Council

Date
528 Approved:

529

530 This is a correct copy of Council action.

531

532
Fiscal Impact Statement

Bill XX-21 – Environmental Sustainability – Building Energy Use Benchmarking and Performance Standards

1. Legislative Summary.

Bill XX-21 amends the Environmental Sustainability Chapter of County Code to expand the buildings required to report under the benchmarking law and creates a new Building Energy Performance Standards (BEPS) program. Specifically, the bill:

   a. expands the number of buildings covered by energy benchmarking requirements,
   b. establishes BEPS for existing buildings,
   c. provides for enforcement of BEPS by listing a violation as a Class A violation,
   d. provides for use of Building Performance Improvement Plans to assist building owners who are not able to meet the requirements of Bill XX-21, and
   e. creates a Building Performance Improvement Board to advice on the implementation of the program.

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.

Bill XX-21 is not expected to have an impact on County revenues.

The legislation will have an impact on expenditures to create and implement a new initiative, BEPS. These estimates were developed after discussions with Washington, DC, and St. Louis, who both have benchmarking programs and are implementing BEPS. The fiscal impact statements for BEPS policies in both jurisdictions are included as attachments.

It is estimated that up to seven total positions would be needed to run the program, three of which are in the existing complement (one vacant). Only one new position would be needed upon enactment (assumed to be in FY22), two new positions would be needed in FY23, and one would be needed in either FY23 or FY24:

- **Manager III**: Currently oversees commercial and residential energy programs for the Department of Environmental Protection, BEPS would be added to its purview.
- **Program Manager I** (Grade 23): Currently manages and enforces the existing Benchmarking Law; the number of buildings that will have to report will more than double under Bill XX-21, from about 800 to 1,800 buildings.
- **Program Manager II** (Grade 25) (vacant, to be filled in FY22): Oversee the program, its implementation, craft BEPS regulations, advise on policy and data analysis, and manage program staff.
- **New – Program Manager I** (Grade 23, $100,445) (FY22): Work with multifamily and affordable housing building owners and managers to meet the benchmarking and BEPS requirements and be a resource for the sectors.
- **New – Program Manager I** (Grade 23, $100,445) (FY23): Engage with stakeholders (from building/business owners to industry groups to advocacy groups) on BEPS through trainings, meetings, developing materials, and maintaining partnerships.
- **New – Program Specialist II** (Grade 21, $92,728) (FY23): Provide administrative support to the BEPS and benchmarking programs by responding to inquiries from the building owners and industry groups, staffing the helpdesk, logging correspondence, and assisting with citation processing.

- **New – Senior Engineer** (Grade 27, $118,299) (FY23 or FY24): Provide expert guidance to building owners on upgrade projects, technical expertise, and for technical review of Building Performance Improvement Plans.

The total annual personnel cost of the new positions outlined above is estimated to be $411,917 when the phase-in is complete. In addition to staffing needs, the legislation would require operating expenses as well:

- **Database Development, Support, and Maintenance**, $80,000 (FY22): The program will require a database to track benchmark data, performance metrics, contact information, and a portal for building owners to engage with the benchmarks/BEPS requirements (off the shelf product is available specifically developed for benchmarking).

- **General Outreach**, $100,000 (FY22): materials and mailings, general program support, supplies, and website.

- **Technical Assistance Hub**, $500,000 ($250,000 in FY23, $250,000 in FY24): Provide a technical assistance resource for property owners in complying with BEPS, likely contracting with an entity that currently performs this activity in Washington, DC.

- **Support for Data and Engineering Analysis**, $100,000 (FY24): The level of engineering analysis needed to implement BEPS and evaluate Improvement Plans will likely require additional outside expertise.

Operating expenses total $780,000 per-year when the phase-in is complete. Combined with the personnel costs, total program costs are $1,191,917 per year.

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

The table below shows the fiscal impact of Bill XX-21 from FY21 through FY26 following the implementation schedule outlined in Question 2. The FY21 costs are estimated at $0 for the length of time it would take to pass Bill XX-21 and then create, recruit, and fill the new positions. When fully implemented in FY24, the cost of the legislation is expected to be $1.2 million annually.

<table>
<thead>
<tr>
<th></th>
<th>FY21</th>
<th>FY22</th>
<th>FY23</th>
<th>FY24</th>
<th>FY25</th>
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<tr>
<td>Personnel Costs</td>
<td>$0</td>
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<td>$334,627</td>
<td>$411,917</td>
<td>$411,917</td>
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<tr>
<td>Operating Expenses</td>
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<td>$180,000</td>
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<tr>
<td>Total</td>
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<td>$764,627</td>
<td>$1,191,917</td>
<td>$1,191,917</td>
<td>$1,191,917</td>
</tr>
</tbody>
</table>

### 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.

Not applicable.
6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

None.

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

The responsibilities under Bill XX-21 constitute a new program and cannot be absorbed within the existing complement. Multiple full-time positions would be needed to fully implement Bill XX-21, as outlined in Question 2. Below is an organizational chart showing how the program would be set up:

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

Bill XX-21 expands the number of buildings that must report under the Benchmarking law and creates the BEPS program under the Department of Environmental Protection, and the workload would necessitate new positions if enacted. There are three existing positions that offset the need for staff, but the workload cannot otherwise be absorbed within the existing complement.

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

New appropriation would be needed in FY22, FY23, and FY24 to fund the additional staffing and operating costs outlined in this Fiscal Impact Statement.

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

The revenue or cost estimates of this bill may be impacted by the following variables:

- The number of buildings covered by this bill – if the number of buildings covered by BEPS changes, staff and expenditures would also change.
- Energy performance improvements in buildings may negatively impact the fuel energy tax revenues.
- Improved building stock may increase building assessed value, rents, and increase property tax revenues.
11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

The variables outlined in Question 10 are difficult to translate into a range of estimates – it is unknown how many more buildings would be needed to be covered under the law before a new position is required, for example. It is similarly difficult to project how fuel energy tax revenue may be impacted by improved energy efficiency.

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

Not applicable.

13. **Other fiscal impacts or comments.**

None.

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

Stan Edwards, Department of Environmental Protection  
Lindsey Shaw, Department of Environmental Protection  
Emily Curley, Department of Environmental Protection  
Richard H. Harris, Office of Management and Budget

*Joshua Watters for JRB*  
Jennifer Bryant, Director  
Office of Management and Budget  
3/26/21  
Date
MEMORANDUM

TO: The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt  
Chief Financial Officer

DATE: June 18, 2019


REFERENCE: Amendment in the Nature of a Substitute circulated June 17, 2019

The Office of the Chief Financial Officer (OCFO) has reviewed the DC Council’s proposal for the FY 2020-2023 budget and financial plan. The Council’s removal of a sweep of $49 million in Washington Convention and Sports Authority (WCSA) reserve funds and Marriott Marquis hotel lease payments, both legally obligated to bondholders, eliminate impediments to certification of the Council’s proposed budget.

Conclusion
Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the Fiscal Year 2020 Budget Support Act of 2019.

The District’s proposed fiscal year 2020 budget includes $8.57 billion in Local fund spending supported by $8.57 billion of local resources, with an operating margin of $0.5 million.

The proposed budget and financial plan accounts for the expenditure and revenue implications of the bill.

*The bill, the “Fiscal Year 2020 Budget Support Act of 2019,” is the legislative vehicle for adopting statutory changes needed to implement the District’s proposed budget and financial plan for the fiscal years 2020 through 2023. The following pages summarize the purpose and the impact of each subtitle.*
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Fiscal Impact of the Student, Foster Youth, Summer Youth Employee, and Adult Learner Transit Subsidies Amendment Act of 2019

<table>
<thead>
<tr>
<th></th>
<th>FY 2020</th>
<th>FY 2021</th>
<th>FY 2022</th>
<th>FY 2023</th>
<th>Four-year Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOES Savings - Ending overlap between SYEP and Kids Ride Free subsidies</td>
<td>($362,000)</td>
<td>($368,335)</td>
<td>($374,781)</td>
<td>($381,340)</td>
<td>($1,486,455)</td>
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<tr>
<td>DOES Cost - Increasing SYEP subsidy</td>
<td>$17,070</td>
<td>$17,369</td>
<td>$17,673</td>
<td>$17,982</td>
<td>$70,093</td>
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<tr>
<td>DDOT Cost - Increasing Adult Learner subsidy</td>
<td>$200,000</td>
<td>$203,500</td>
<td>$207,061</td>
<td>$210,685</td>
<td>$821,246</td>
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<tr>
<td>Total Fiscal Impact</td>
<td>($144,930)</td>
<td>($147,466)</td>
<td>($150,047)</td>
<td>($152,673)</td>
<td>($595,116)</td>
</tr>
</tbody>
</table>

Subtitle (VI)(F) – CleanEnergy Implementation Amendment Act of 2019

**Background**
In late 2018, the Council passed the CleanEnergy DC Omnibus Amendment Act (Act). The Act is intended to protect the environment by setting more aggressive renewable energy goals, encouraging reductions in energy use through increased sustainable energy surcharges, improving building efficiency, developing more business participation in energy efficiency fields, and encouraging consumer choices to reduce emissions in the transportation sector.

The Act includes a more aggressive Renewable Portfolio Standard and increases the sustainable energy surcharge to generate more District revenues from utility providers or to cause more power to be generated with renewable sources. The Act also develops a new Building Energy Performance Standard Program and requires District agencies to conduct studies and plans to reduce energy usage related to buildings and transportation.

The subtitle repeals the subject to appropriations funding clause allowing the law to be implemented with the fiscal year 2020 budget. In doing so, the more aggressive Renewable Portfolio Standards will go into effect; the sustainable energy surcharges on electricity, natural gas, and home fuel oil will increase; the Department of Energy and Environment (DOEE) will develop the Building Energy Performance Standard Program and the Department of Motor Vehicles (DMV) will adjust the vehicle excise tax to be more favorable to more fuel-efficient vehicles. The latter provision includes a full exemption from the excise tax for all electric vehicles.

The subtitle allows the Act’s 30 percent set-aside for low-income residents and workforce development to be used to fund DMV’s implementation of the Act’s vehicle excise tax changes. The subtitle also allows the District to use the set-aside to implement the strategic energy management plan to reduce energy and water use within the Department of General Services’ (DGS) portfolio.

---

133 Enacted January 18, 2019 (D.C. Act 22-583; 66 DCR 1344).
134 Clean and Affordable Energy Act of 2008, effective October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1774.10(b)).
135 District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(j)).
The Honorable Phil Mendelson
Fiscal Impact Statement for “Fiscal Year 2020 Budget Support Act of 2019,” Amendment in the Nature of a Substitute, circulated June 17, 2019

Financial Plan Impact
The subtitle fully implements the CleanEnergy DC Omnibus Amendment Act. The Act’s implementation will increase revenues for the Sustainable Energy Trust Fund (SETF) and increase program costs at DOEE, DMV, DGS, and the District Department of Transportation (DDOT). The Act’s motor vehicle excise tax exemption for electric vehicles will reduce those tax revenues by approximately $132,000 annually.

The charts below outline the costs associated with the Act’s implementation and the more detailed impact on the SETF.136

### CleanEnergy Implementation Amendment Act of 2019
**Implementation Costs**
**Fiscal Year 2020 – Fiscal Year 2023**

<table>
<thead>
<tr>
<th></th>
<th>FY 2020</th>
<th>FY 2021</th>
<th>FY 2022</th>
<th>FY 2023</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td><strong>DISTRICT ENERGY COSTS</strong></td>
<td></td>
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<tr>
<td>Solar Compliance</td>
<td>$0</td>
<td>$1,000</td>
<td>$1,190</td>
<td>$1,300</td>
<td>$3,490</td>
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<tr>
<td>SETF Assessments</td>
<td>$742</td>
<td>$698</td>
<td>$661</td>
<td>$621</td>
<td>$2,722</td>
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<tr>
<td><strong>Total Energy Costs</strong></td>
<td>$742</td>
<td>$1,698</td>
<td>$1,851</td>
<td>$1,921</td>
<td>$6,212</td>
</tr>
</tbody>
</table>

|                         |         |         |         |         |       |
| **BUILDING PERFORMANCE PROGRAM** |         |         |         |         |       |
| DOEE Personnel          | $650    | $674    | $698    | $750    | $2,772 |
| DOEE Startup Costs      | $164    | $0      | $0      | $0      | $164  |
| DOEE Ongoing Costs      | $386    | $398    | $410    | $422    | $1,616 |
| **Total DOEE Costs**    | $1,200  | $1,072  | $1,108  | $1,172  | $4,552 |

|                         |         |         |         |         |       |
| **STUDIES AND PLANS**   |         |         |         |         |       |
| Building Performance Study | $250    | $0      | $0      | $0      | $250  |
| DGS Strategic Energy Management Plan | $250    | $0      | $0      | $0      | $250  |
| DDOT Clean Vehicle Transition Study | $250    | $0      | $0      | $0      | $250  |
| **Total Studies and Plans Costs** | $750    | $0      | $0      | $0      | $750  |

|                         |         |         |         |         |       |
| **TRANSPORTATION INITIATIVES** |         |         |         |         |       |
| DMV Personnel           | $68     | $71     | $74     | $76     | $289  |
| DMV System Update       | $150    | $0      | $0      | $0      | $150  |
| Electric Vehicle Excise Tax Exemption | $132    | $132    | $132    | $132    | $528  |
| **Total Transportation Costs** | $350    | $203    | $206    | $208    | $967  |

|                         |         |         |         |         |       |
| **NEW SETF COMMITMENTS** |         |         |         |         |       |
| Green Finance Authority Transfers | $15,000    | $15,000 | $10,000 | $10,000 | $50,000 |
| 30% Allocation for Low-Income, Certified Business Enterprises, and Overall Act Implementation | $7,130    | $6,766  | $6,456  | $6,119  | $26,470 |
| Affordable Housing Programs | $0      | $0      | $3,000  | $3,000  | $6,000 |
| **Total SETF Commitments** | $22,130  | $21,766 | $19,456 | $19,119 | $82,470 |

|                         |         |         |         |         |       |
| **TOTAL IMPLEMENTION COSTS** | $25,172  | $24,739 | $22,621 | $22,420 | $94,951 |

---

Summary of Building Energy Performance Standards (BEPS) Legislation

Learn more at https://www.montgomerycountymd.gov/green/energy/beps.html
The proposed bill will:

• Require ~1,850 commercial and multifamily buildings to meet long-term energy performance standards
• Require extensive and costly improvements to buildings in many cases
• Challenge less-sophisticated building owners, including owners of affordable housing, non-profit, and small businesses
• Require technical and financial resources, and new staff, to successfully implement – for both the County and building sector
• Require change in State law to allow higher penalties for poor performing buildings
• Result in more efficient, healthier, and higher value buildings
• Support job creation in the energy services sector
Background

• Jurisdictions across the country are beginning to adopt BEPS legislation and using a variety of strategies and metrics
• DEP engaged stakeholder group in 2019-2020 to gather policy recommendations
• Key guiding principle in County’s BEPS policy: Balancing flexibility and immediate action

• General Approach to Legislation:
  • Modify the current Benchmarking Law to include performance requirements, additional covered buildings, and minor clarifications
  • Allows BEPS to apply in Cities of Rockville and Gaithersburg without opting in
  • Creates framework to establish BEPS, achieves “First County” status
  • Technical details will be defined in later regulation
Expanding Buildings Covered by Benchmarking Law

• Currently covered by the Benchmarking Law:
  • County-owned buildings 50,000 gross square feet and greater
  • Non-residential properties 50,000 gross square feet and greater

• Proposed amendment would phase in new covered buildings to include:
  • Additional County-owned buildings 25,000 – 50,000 gross square feet
  • Additional non-residential properties 25,000 – 50,000 gross square feet; previously exempted building types (e.g., warehousing, self-storage)
  • Multifamily properties 25,000 gross square feet and greater
Proposed Benchmarking Law Impact

- Currently covered: **114M sq ft, 795 buildings, 40% of commercial floor area**
- Proposed covered buildings increase to: **247M sq ft, 1,850 total buildings, 85% of commercial floor area**:
  - Δ 133M sq ft of covered building area
  - Δ ~1,000 new buildings covered
  - Δ 45% of commercial building area covered

Rentable Building Area by Group

- **Not covered**: 32M sq ft
- **"Group 5", MF 25-250k**: 32M sq ft
- **"Group 4", MF 250k+**: 101M sq ft
- **"Group 3", 25-50k & previously exempted 50k+**: 114M sq ft
- **Group 2, 50-250k**: 114M sq ft
- **Group 1, 250k+**: 114M sq ft
BEPS Policy Overview

• Long-term site energy use intensity performance standards are created for each covered property type
• Onsite solar is fully credited against site energy use as “net normalized site EUI” to incentivize solar installations
• Each covered building’s baseline based on average historical energy use
• Data is reported annually via ENERGY STAR Portfolio Manager as required by the Benchmarking Law
• Every 4 years, properties are evaluated as to whether they are meeting interim targets (to be defined in regulation)
Building Performance Improvement Plans (BPIPs)

- If a property cannot reasonably meet the Interim or Final Performance Standards, the County can accept a BPIP
- The owner must carry out the actions and timeline in an approved BPIP to be considered “in compliance”
Poor Performance Payments

• If a property owner does not meet the BEPS target or have a DEP-approved BPIP, then the building would be non-compliant and subject to a Poor Performance Payment.

• The goal is to have an PPP at a level high enough where a building would prefer to be in compliance through meeting BEPS or filing an BPIP. The PPP is a last resort.

• **A change is required to state law for fines greater than $1,000**
  • Proposing to link PPP to building valuation and distance from the standard

• Ideally, the PPP funds would be directed in a dedicated fund to support a “technical assistance hub” to help resource-constrained sector buildings comply with BEPS.
Building Advisory Board

• Advisory Board would provide recommendations on BEPS implementation, but the County is the decision-making authority
• 15 voting members with DGS, DEP, and DPS nonvoting members
• Tasked with advising on:
  • Creating interim and long-term performance standards
  • Reviewing building performance improvement plans
  • Handling situations of change in building ownership or property use type
  • Developing guidance for unique building situations (e.g., campuses)
  • Providing technical guidance on poor performance payments
• Board creation pending passage of legislation
• Newly covered buildings benchmark for 3 years before phasing into BEPS program
• Buildings report annually on June 1 with BEPS progress assessed in interim and final standard years
• Group 3 would need to start benchmarking 2021 data by June 1, 2022 for timelines in BEPS law to work as-is
## Summary of BEPS Legislation

<table>
<thead>
<tr>
<th>Policy elements</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Covered Buildings</strong></td>
<td>County, commercial, and multifamily 25K+ sq. ft.</td>
</tr>
<tr>
<td><strong>Performance Standard</strong></td>
<td>Long-term &amp; interim standards by building type based on normalized site EUI with onsite solar given credit</td>
</tr>
<tr>
<td><strong>Compliance Cycle</strong></td>
<td>Interim targets every 4 years with long-term standard culminating in 2035 for properties benchmarking now; new benchmarking groups phased in after 3 years of benchmarking</td>
</tr>
<tr>
<td><strong>Equity</strong></td>
<td>Law would cover nearly all regulated and naturally occurring affordable housing, many small businesses, houses of worship, non-profits—but adjustments/extensions are available. Provide technical assistance for challenged/under-resourced sector groups.</td>
</tr>
<tr>
<td><strong>BPIPs</strong></td>
<td>Building performance improvement plans (BPIPs) required if targets are missed, as approved the Department</td>
</tr>
<tr>
<td><strong>Advisory Board</strong></td>
<td>Specific requirements for representation, like other County Advisory Boards (terms, compensation, etc.)</td>
</tr>
</tbody>
</table>
DRAFT Fiscal Impacts of BEPS

• 5 new FTEs will be needed to implement expanded Benchmarking and BEPS: $489K/year
  • DEP ECCD Organizational Chart with new BEPS positions (in *italics*)
  • In line with staffing needs and FTE estimates in DC and St. Louis
• Additional programmatic funds: $780K/year
  • Technical assistance for building owners
  • Data and engineering analyses
  • Database development
  • Outreach materials
Next Steps

• Finalize Benchmarking Law amendments and BEPS legislative package to Council in early March 2021
• Continue data analyses for standard setting
• Begin drafting regulations to provide necessary detail on implementation to be issued no later than June 1, 2022
Summary
Board Bill Number 219
Primary Sponsor: Alderwoman Heather Navarro
February 14, 2020

A. The overall purpose and/or reasons for the bill.
The purpose of the Building Energy Performance Standard (BEPS) bill is to reduce greenhouse gas emissions, drive energy efficiency improvements in its buildings, and boost its economic growth and job creation within the City of St Louis. This bill builds upon the Energy Awareness Ordinance passed in 2017, which requires buildings that are 50,000 square feet and above to report energy and water data annually to the City. The BEPS aligns with the City’s climate goals and its Pathways to 100% Clean Energy report which recommends a BEPS. Pursuing this policy also aligns with the City’s goals in making significant carbon reductions and providing leadership to other cities throughout the American Cities Climate Challenge.

B. What the bill will do.
St. Louis’ BEPS will require large commercial, multi-family, institutional, and municipal buildings (50,000 sq. ft. and above) to reduce energy use in order to meet an energy performance standard by May 2025, which will be reviewed and updated every four years. Performance standards will be set by the Building Energy Improvement Board and measured in the amount of energy used per square foot at the building (site energy use intensity or EUI) and based on building type. Building owners will be required to comply with standards using a free, online ENERGY STAR Portfolio Manager tool. This bill will include the creation of a new Office of Building Performance to oversee the implementation, compliance and enforcement of the existing Building Energy Awareness ordinance (#70474), BEPS, and any future ordinances related to building energy improvement and performance.

C. The main components of the bill and significant provisions. The bill creates a Building Energy Improvement Board with representation from the building industry, utilities, and building owners. The board’s role is three-fold: to oversee a rulemaking process that sets and updates performance standards; to advise, to oversee implementation of the ordinance; and to administer a process for creating alternative compliance methods for buildings unable to meet the required standards.

D. The impact the bill will have to the community
Passage of this bill will have a positive impact on both economic growth and environmental impact. The Building Division – working with the Board, local utilities, and other partners – will provide as many resources as possible to assist building owners with compliance, including educational opportunities, continued one-on-one assistance with benchmarking, and financial and other resources.
An ordinance entitled “Building Energy Performance Standards”; the purpose of this ordinance is to establish energy performance standards for certain buildings in the City of St. Louis.

WHEREAS, the City has set a goal of reducing community-wide greenhouse gas emissions 100% by 2050 from 2005 levels.

WHEREAS, the source of approximately 80% of greenhouse gas emissions in the City of St. Louis is existing commercial, residential and industrial buildings.

WHEREAS, research has demonstrated that the reduction of greenhouse gas emissions likely to contribute to regional carbon reductions that will result in better air quality important for health and well-being.

WHEREAS, the City has previously adopted Ordinance Number 70474, entitled “Building Energy Awareness” which established energy benchmarking and reporting requirements for certain buildings; which also aims to raise awareness about the opportunities to reduce energy use and greenhouse gas emissions from our largest buildings to help meet the City’s climate goals; the City has collected two years of benchmarking data and sees an opportunity for these buildings to improve.

WHEREAS, the City desires through this article to establish energy performance standards for certain buildings within its jurisdiction in order to save money on energy costs while further reducing greenhouse gas emissions.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:
That by and through this ordinance entitled “Building Energy Performance Standards”, this Board seeks to establish energy standards for certain buildings in the City.

SECTION ONE. Purpose and Policy. The purpose of this ordinance is the establishment of building energy performance standards for municipal, commercial, institutional, and multi-family properties that have a total gross floor area of 50,000 square feet or above within the City.

SECTION TWO. Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

A. “Commissioner” means the City of St. Louis Building Commissioner, or the Commissioner’s designee;

B. “Owner” means any of the following:

1. An individual or entity possessing title to a covered property;

2. The net lessee in the case of an entire property subject to a triple net lease with a term of 10 years or more;

3. The board in the case of a condominium;

4. The board in the case of a cooperative apartment corporation; or

5. An agent authorized, in writing on file with the Commissioner, to act on behalf of any of the above.

C. “Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state or local governmental entities.

D. “Condominium” means a site that combines separate ownership of individual units with common ownership of other elements such as common areas.
E. “Covered property” means a building that is greater than or equal to 50,000 gross square feet in total gross floor area. The term “covered property” shall not include any building owned by the State of Missouri or the federal government.

F. “Energy” means electricity, natural gas, steam, hot water, chilled water, biomass or fuel oil to the covered property or generated on-site for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses captured by the ENERGY STAR Portfolio Manager.

G. “Site energy use” means the annual amount of all the energy a property consumes on-site as calculated by ENERGY STAR Portfolio Manager or an alternative system or tool approved by the Building Commissioner.

H. “Site energy use intensity (EUI)” means the site energy use divided by the gross floor area of the property as calculated by ENERGY STAR Portfolio Manager or an alternative system or tool approved by the Building Commissioner.

I. “Weather normalized site energy” means the energy use a property would have consumed during 30-year average weather conditions as calculated by ENERGY STAR Portfolio Manager or an alternative system or tool approved by the Building Commissioner.

J. “ENERGY STAR Portfolio Manager” means the web-based tool developed and maintained by the U.S. Environmental Protection Agency to track and assess the relative energy performance of buildings nationwide. An alternative system or tool may be approved by the Commissioner.

K. “Financial hardship” (of a property) means a property that:

1. had arrears of property taxes or water or refuse charges that resulted in the property’s inclusion, within the prior 2 years, on the city’s annual tax lien sale list; or

2. Has a court appointed receiver in control of the asset due to financial distress; or
3. Is owned by a financial institution through default by the borrower; or

4. Has been acquired by a deed in lieu of foreclosure; or

5. Has a senior mortgage subject to a notice of default.

L. “Communications infrastructure” means facilities used to house equipment to deliver electronic communications services, including voice, broadband, data and video services.

M. “Gross floor area” means the total property square footage, as measured between the exterior walls of the building(s). This includes all finished areas inside the building(s) including supporting areas.

N. “Qualified affordable building(s)” means a building in which a majority of the households in the building make less than eighty percent of the Area Median Income for the City of St. Louis.

SECTION THREE. Applicability. This article shall apply to municipal, commercial, institutional, and multi-family buildings 50,000 square feet or above within the City of St. Louis.

A. “Covered property” means a building that is greater than or equal to 50,000 gross square feet in total gross floor area; including:

1. A building that is owned by the City; or for which the City regularly pays all or a majority of the annual energy bills.

2. A building that is held in the condominium form or ownership that is governed by the same board, and that is greater than or equal to 50,000 gross square feet in total gross floor area

SECTION FOUR. Standards & Compliance The City shall establish energy performance standards for covered buildings in the City. The following standards regarding building energy performance shall be for property types outlined in Applicability Section:

A. Standards for each property type will be set by May 4, 2021 through a stakeholder engagement process overseen by the Building Energy Improvement Board. Standards will be
revised no later than every four years. The chief performance metric will be site energy use intensity (EUI). Standards will be set no lower than the 65th percentile by property type such that at least 65% of the buildings of that property type have a higher EUI.”

1. The Building Division shall establish data verification requirements for each four-year compliance cycle.

2. The building energy performance standard shall be no lower than the 65th percentile site energy use intensity (EUI) for buildings of each property type collected through benchmarking reporting from ENERGY STAR Portfolio Manager.

3. To the extent practical, target site EUIs by property type will be based on local buildings’ benchmarking data.

4. If building owners believe that due to unusual circumstances they will be unable to meet the building energy performance standards established by the City by the deadline or exceptionally burdened by doing so, then they may propose and present an alternative compliance plan for consideration by the Building Energy Improvement Board for approval.

B. Building owners will comply through the existing benchmarking reporting process, which uses ENERGY STAR Portfolio Manager as the reporting tool.

C. Compliance cycles.

1. Performance standards will be set by May 4, 2021 by the Building Energy Improvement Board and revised every four years thereafter. Following every compliance cycle, there shall be a period of time of up to one year between each compliance cycle to allow the Building Energy Improvement Board time to reevaluate and to update the building energy performance standards. The first Building Energy Performance standards shall be approved no later than May 4, 2021.
2. First Building Energy Performance Standard compliance cycle shall begin on the day they are approved and end four years after that day. The compliance cycle will end no later than May 1, 2025.

   (a) Except that qualified affordable building(s) and houses of worship shall comply with a compliance cycle of six years in order to provide owners with adequate time to work through considerable financing and capacity constraints. The compliance cycle shall begin the day they are approved and end six years after that day. The compliance cycle will end no later than May 4, 2027.

D. Compliance pathways

1. Buildings that meet their respective building energy performance standard at the end of the four-year compliance cycle are compliant.

2. Buildings performing below the building energy performance standard or if building owners believe that due to unusual circumstances they will be unable to meet the building energy performance standards established by the City by the deadline or exceptionally burdened by doing so, then they may conduct the following:

   (a) presenting an alternative compliance plan for consideration and approval by the Building Energy Improvement Board. Implementation of any alternative compliance plans must begin no later than May 4, 2024.

   (i) alternative compliance plans shall be made private between the Board and the building owner and/or building owner’s authorized representatives.

   (b) make an alternative compliance payment to the Building Division or daily ordinance violation as determined by the Building Commissioner.
E. Building Energy Improvement Board will create a pathway for buildings that benefit from 
depth energy improvements and achieve energy performance well beyond the required 
performance standard to be in compliance for 15 years.

SECTION FIVE. Office of Building Performance - Creation and Purpose. The office 
of Building Performance is hereby established within the Building Division. The mission 
of this office will be to oversee the implementation, compliance and enforcement of the 
esting Building Energy Awareness ordinance (#70474), the Building Energy 
Performance Standards ordinance, and any future ordinances related to building energy 
improvement and performance.

SECTION SIX. Building Energy Improvement Board. There is hereby established a 
Building Energy Improvement Board (hereinafter, “Building Energy Improvement Board” 
or “Board”).

A. Board Composition and Roles.

1. The Board shall consist of nine members appointed by the Mayor. At least six 
members of the Board shall be residents of the City of Saint Louis and three members shall 
be residents of the St. Louis region.

2. Within 60 days of the applicability date of this title, the Building Energy Improvement 
Board shall be established, which shall:

(a) Establish and approve building energy performance standards by property type 
for each compliance cycle, as recommended by the Building Division;

(b) Review and, as necessary, recommend amendments to proposed regulations 
issued by the Building Division;

(c) Recommend complementary programs or policies;
(d) Review appeals regarding any action(s) taken due to this ordinance and the
Building Energy Awareness Ordinance (#70474)

(e) Provide sample alternative compliance plans to meet building energy
performance standards

(f) Review alternative compliance plans submitted and make recommendations
for approval or denial by the Building Division.

3. The Building Energy Improvement Board shall be comprised of representatives, or
their designees, from the following, but not limited to, possible entities:

   a) Building Division
   b) local utilities
   c) a provider of energy efficiency or renewable energy services
   d) affordable and/or multi-family housing representative
   e) affordable housing tenant
   f) labor
   g) technical building design professional(s)
   h) environmental non-profit
   i) commercial building
   j) engineering

4. A technical sub-committee shall also be established and charged with reviewing and
acting on alternative compliance plans and would consist of at least 80 percent of technical
experts. Members of the technical sub-committee may also be members of the full Building
Energy Improvement Board. The decision(s) of the sub-committee can be appealed to the full
Building Energy Improvement Board.
5. Alternates to Board. The alternates shall have all power, protection, and stipends as the regular board members in accordance with Civil Service protection. The alternates shall be appointed by the Mayor for four-year terms.

6. Term of Office. All appointments and subsequent appointments shall be for a term of 4 years and shall expire on the anniversary of the date of the original term, except appointments to fill vacancies which shall be for the unexpired term. Terms for first appointments will be staggered. Members whose appointed terms have expired shall be permitted to continue to serve until reappointed or replaced by a new appointee.

7. Procedures. The Board shall elect one of its members as chair who shall serve as such during the remainder of the calendar year or until a successor is elected. The Board shall from time to time adopt rules and regulations as shall be reasonably necessary to govern its procedure and to carry into effect the provisions of this article.

   a) These rules and regulations shall be available for review at the office of the Secretary to the Board during normal working hours. It shall be unlawful for any appellant or appellant’s representative to contact any member of the board on any matter that is pending or scheduled to be heard by the Board.

8. Compensation. The Building Energy Improvement Board members and technical subcommittee members shall be compensated for services rendered on a per meeting basis as established by rulemaking and subject to budgeted funds availability. Fifty dollars ($50) shall be paid to each member present on a per meeting basis. Budgeted funds will be paid from the Building Division.

B. Meetings; Witnesses; Minutes.
1. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board shall permit by its rules. The chair, or in the chair’s absence, the acting chair shall administer oaths. The Board shall act by a majority vote and a quorum shall consist of at least 5 members.

2. All hearings shall be conducted in accordance with the provisions of the Missouri Administrative Procedure Act. All testimony shall be given under oath or affirmation. The Board Chair or Secretary to the Board may issue subpoenas to secure the attendance and testimony of relevant witnesses and the production of relevant documents.

3. The Board shall keep minutes of its proceedings showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations of witnesses and other official acts. Transcripts of hearings shall be permitted to be kept in the custody of the court reporter and need not be transcribed unless requested. The party requesting the transcripts shall pay all costs of such transcripts required including a file copy for the board, one for the Building Division, and one for the Board’s legal staff.

C. Exemptions.

1. The Board may grant an extension of the performance standard submission date or an exemption from the building energy performance standard requirement to the owner of a covered property that submits a request, together with documentation, in a form prescribed by the Board’s rule, at least 90 days prior to any building energy performance standard submission deadline, if the appellant meets any of the following criteria:

   a) A demolition permit was issued or is demolition is planned during a compliance cycle, provided that demolition work has commenced and energy-related systems have been significantly compromised.
b) The Building Energy Improvement Board determines that due to special circumstances unique to the applicant’s facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this ordinance would cause financial hardship or would not be in the public interest.

c) The property is primarily used for manufacturing or other industrial purposes for which benchmarking results would not meaningfully reflect covered property energy use characteristics due to the intensive use of process energy.

d) The property is primarily used for communications infrastructure.

e) The property is owned by the State of Missouri or the federal government.

2. Any owner requesting such an extension or exemption shall provide the Board any and all documentation requested to substantiate the request or otherwise assist the Board in the extension or exemption determination. Any extension or exemption granted shall be limited to the building energy performance standard submission for which the request was made and shall not extend to past or future submittals.

SECTION SEVEN. Appeals. Appeals of any decision of the Commissioner regarding any person’s failure to meet any required building energy performance standard can be appealed to the Building Energy Improvement Board.

A. Filing Date of Appeal.

Any allowable appeal pursuant to this article shall be filed within thirty (30) calendar days after the decision of the building official that is being appealed.

B. Manner and Fee for Filing Appeals.

Appeals shall be taken by filing with the Secretary to the Board a notice of appeal on such forms as prescribed by the Board specifying the grounds thereof. The Board Secretary shall...
immediately transmit to the Board such notice and all papers constituting the record upon which
the action appealed from is taken. The notice of appeal shall be accompanied by a fee of $100.

C. Multiple Appeals.

In the event that more than one building, structure, or premises owned by the same person,
firm, or corporation has been cited for exactly the same violation and the owner has filed an appeal
with the board disputing the same citation, the appellant shall be permitted to file one appeal
covering all said buildings, structures, or premises and be charged one appeal fee. The decision
rendered by the Board shall apply to all buildings, structures, or premises involved in the appeal.

D. Board Hearings; Notifications.

After an appeal has been filed, the Secretary to the Board shall place the appeal on a Board
hearing agenda and the appellant shall be notified in writing by certified mail prescribing the time,
date, and location of the hearing not less than seven days prior to said hearing. Such hearing shall
be held within a reasonable time after the filing of the notice of appeal, depending on the
scheduling of other appeals.

E. Appeals From Decisions of the Board.

Any person(s) jointly or severally aggrieved by the decision of the Energy Performance
Standards Board shall be entitled to judicial review of the decision rendered by the Board as
provided in the Administrative Procedure and Review Act of the State of Missouri, being Sections
536.100 - 536.140 of the Revised Statutes of Missouri.

F. Hearing Officer.

The Building Energy Improvement Board shall have the right to appoint a hearing officer
to hear and render a decision on any appeal filed with the Board.
The hearing officer shall be an attorney and on an approved list of attorneys who have administrative law experience. The Director of Public Safety shall compile and maintain said list. The hearing officer shall have such rights, responsibilities, and duties as the Building Energy Improvement Board and the appellants shall have the same rights as an appellant appearing before the Building Energy Improvement Board, including the right to appeal pursuant to Missouri’s Administrative Procedure and Review Act.

SECTION EIGHT. Rules. The Commissioner may promulgate such rules as are necessary to carry out the provisions of this article.

SECTION NINE. Severability. If any section, subsection, sentence, clause, phrase or other portion of this article is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this article, which remaining portions shall continue in full force and effect.

SECTION TEN. Emergency Clause. This being an Ordinance necessary for the immediate preservation of public peace, health and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 or Article IV of the Charter of the City of St. Louis and therefore this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

SECTION ELEVEN. Maintenance of Records. Owners of covered property shall maintain records that are necessary for demonstrating compliance with this article, including but not limited to, the energy and water bills and any reports or forms received from tenants and utilities. All such records shall be preserved for a period of 7
years from the applicable submission date. At the request of the Commissioner, such records shall be made available for inspection and audit by the Commissioner.

When a covered property changes ownership, the previous owner shall provide the new owner all information for the years complying with the energy performance standard during the time the previous owner was still in possession of the property.

SECTION TWELVE. Violations and Enforcement. Ordinance violation. Any person who fails to comply with any building energy performance information submittal requirement mandated by this article or misrepresents any material fact in a document or report prepared as required by this article shall result in the following:

A. written warning shall be issued by the Commissioner to any owner who fails to submit any required building energy performance information. Such warning letter shall be effective on the date of issuance and shall be mailed to the owner’s last known address as determined by county record.

B. In the event required benchmarking and data verification information is not reported within 60 days of the date the written warning is issued, said failure shall constitute an offense and shall be punishable, upon conviction, a fine not less than one dollar nor more than five hundred dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment. Each day of the violation continues shall constitute a separate offense.

C. Additional available remedies. If any person violates the provisions of this article, the City Counselor’s Office may initiate an action for legal or equitable relief in any court with appropriate jurisdiction. A petition for legal or equitable relief shall not be a bar against, or a prerequisite for, taking any other action against any person.
D. Nonexclusivity. The remedies provided for in this article are not exclusive. The
Commissioner may take any, all, or combination of these actions, or any other action available at
law, against any person.
BOARD BILL NUMBER 219
FISCAL NOTE

Preparer’s Name __Frank Oswald______

Phone Number or Email Address (will be available publicly) _____314-622-3318

Bill Sponsor _______Heather Navarro__________

<table>
<thead>
<tr>
<th>Bill Synopsis:</th>
<th>Creating an energy performance standard for buildings greater than 50,000 SQ. FT.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Impact:</td>
<td>Significant impact on promotion of environmentally friendly construction/development practices.</td>
</tr>
<tr>
<td>Agencies Affected:</td>
<td>Building Division</td>
</tr>
</tbody>
</table>

SECTION A
Does this bill authorize:

- An expansion of services which entails additional costs beyond that approved in the current adopted city budget?  
  __x__Yes __No

- An undertaking of a new service for which no funding is provided in the current adopted city budget?  
  __x__Yes __No

- A commitment of city funding in the future under certain specified conditions?  
  __x__Yes __No

- An issuance of bonds, notes and lease-purchase agreements which may require additional funding beyond that approved in the current adopted city budget?  
  __x__Yes __No

- An execution or initiation of an activity as a result of federal or state mandates or requirements?  
  ____Yes  x_No

- A capital improvement project that increases operating costs over the current adopted city budget?  
  ____Yes  x_No

- A capital improvement project that requires funding not approved in the current adopted city budget or that will require funding in future years?  
  ____Yes  x_No

(01/2017)
If the answer is yes to any of the above questions, then a fiscal note must be attached to the board bill. Complete Section B of the form below.

SECTION B

• Does the bill require the construction of any new physical facilities?  ____Yes  ____No
  
  o If yes, describe the facilities and provide the estimated cost:
  
  _________________________________________________________________
  _________________________________________________________________
  _________________________________________________________________
  _________________________________________________________________
  _________________________________________________________________

• Is the bill estimated to have a direct fiscal impact on any city department or office?  ____x__Yes  ____No
  
  o If yes, explain the impact and the estimated cost:

  Increased staffing and associated costs (see attached budget)
  _________________________________________________________________
  _________________________________________________________________
  _________________________________________________________________
  _________________________________________________________________
  _________________________________________________________________

• Does the bill create a program or administrative subdivision?  ____x__Yes  ____No
  
  o If yes, then is there a similar existing program or administrative subdivision?  ____x__Yes  ____No
  
  o If yes, explain the how the proposed programs or administrative subdivisions may overlap:

  Bill will create Office of Building Performance. This office will support existing Plan Review process for building permits. This office will absorb our current City Energy Project and enforce/manage both the Building Energy Performance Standard ordinance and the Building Energy Awareness ordinance, which the Building Division also enforces/manages.
  
  _________________________________________________________________
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• Describe the annual operating, equipment, and maintenance costs that would result from the proposed bill, as well as any funding sources:

Annual operating costs (see attached budget)
______________________________________________________________
______________________________________________________________
______________________________________________________________
______________________________________________________________

Complete the chart below to list the total estimated expenditures required of the City resulting from the proposed board bill and any estimated savings or additional revenue.

<table>
<thead>
<tr>
<th>Financial Estimate of Impact on General Fund</th>
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<tbody>
<tr>
<td>Fiscal Impact</td>
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<tr>
<td>Additional Expenditures</td>
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<tr>
<td>Additional Revenue</td>
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<table>
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<th>Financial Estimate of Impact on Special Funds</th>
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<tr>
<td>Fiscal Impact</td>
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<td>Additional Expenditures</td>
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<tr>
<td>Additional Revenue</td>
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<tr>
<td>Net</td>
</tr>
</tbody>
</table>

• Describe any assumptions used in preparing this fiscal note:

  Fund 116 which is used for lead remediation will be expanded to environmental causes.

• List any sources of information (including any City officials, agencies, or departments) used in preparing this fiscal note:

  Frank Oswald – Building Commissioner; Rajiv Ravulapati – City Energy Project/Government Services Analyst; David Thackwell – Accountant

• Have the financial estimates of this bill been verified by the City Budget Division?
  ____Yes  __x__No

  ○ If yes, by whom? ________________________________.
<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount Requested</th>
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<td>204,906.00</td>
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<td>$100,000</td>
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<tr>
<td>27.924.00</td>
<td>Environmental Engineer</td>
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<td>Program Manager II</td>
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**Building Division**

**Incremental Cost**

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**Proposed TE0.1**

**Office of Building Performance Budget Request FY21**