Bill No. 2-14
Concerning: Environmental Sustainability
– Buildings – Benchmarking
Revised: 4/22/2014 Draft No. 6
Introduced: January 28, 2014
Enacted: April 22, 2014
Executive: 
Effective: 
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner, Floreen, Riemer, Andrews and Navarro

AN ACT to:

(1) require the owners of certain buildings to benchmark the energy use of certain buildings;
(2) require the Director of the Department of Environmental Protection to issue an annual report to review and evaluate energy efficiency in certain covered buildings;
(3) require the Director make certain benchmarking information readily available to the public;
(4) allow the Director to waive certain requirements;
(5) establish a Benchmarking Work Group to review the implementation of Chapter 18A, Article 6 and report to the Council and Executive with recommendations on implementing building benchmarking for privately-owned buildings; and
(6) generally amend County law regarding energy efficiency and environmental sustainability.

By adding
Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Article 6

Boldface
Underlining
[Single boldface brackets]
Double underlining
[[Double boldface brackets]]
* * *

Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

Article 5. Commercial Property Assessed Clean Energy Program.


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

*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 by the United States Environmental Protection Agency to track and assess the relative energy use of buildings nationwide.

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

*County building* means any building owned by the County, or any group of buildings owned by the County that have the same property identification number, that equals or exceeds 50,000 square feet gross floor area, as identified by the Director.

*Covered building* means any County building, Group 1 covered building, or Group 2 covered building. *Covered building* does not include any building with more than 10% occupancy 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.

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

Department means the Department of Environmental Protection.

Director means the Director of the Department or the Director’s designee.

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

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.

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

Group 2 covered building means any nonresidential building, or any group of nonresidential buildings that have the same property identification number, not owned by the County that equals or exceeds 50,000 square feet gross floor area but is less than 250,000 square feet gross floor area, as identified by the Director.
Gross floor area means the sum of the gross horizontal area of the several floors of a building or structure measured from the exterior faces of the exterior walls or from the center line of party walls. In a covered but unenclosed area, such as a set of gasoline pumps or a drive-through area, gross floor area means the covered area. Gross floor area 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.

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

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. Reported benchmarking information includes the building identification number, address, gross floor area, energy performance score, 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.
18A-39. **Energy use benchmarking.**

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

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

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

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

(1) is in 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; or

(3) is new construction and received its certificate of use and occupancy during the calendar year for which benchmarking is required.
(a) **Verification required.** Before the first benchmarking deadline required by Section 18A-39, and before each third benchmarking deadline thereafter, the owner of each covered building must assure that reported benchmarking information for that year is verified by a licensed professional. The verification must be a stamped and signed statement by a licensed professional attesting to the accuracy of the information. If the Director requests, the owner of a covered building must produce the statement available for the most recent year in which verification was required.

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

**Solicitation of compliance information from tenants.**

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

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

(c) **Failure of tenant to provide information.**

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

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

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

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

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

(a) **Annual report required.** By October 1 of each year, the Director must
submit a benchmarking 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;

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

(3) for County buildings:
the scores of County buildings benchmarked; and

whether the Director recommends any energy efficiency improvements for specific buildings.

(b) **Disclosure of benchmarking information.** The Director must make reported benchmarking information 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 information relating to a covered building that contains a data center, television studio, or trading floor that together exceeds 10% of the gross 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.

18A-43. **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.
Sec. 2. Benchmarking Work Group.

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

(b) The Work Group must:

(1) review the application of Chapter 18A, Article 6, as added by Section 1 of this Act, to County buildings for the reporting period ending June 1, 2015; and

(2) submit a report to the County Council and County Executive by September 1, 2015 with recommendations on implementing building benchmarking for privately-owned buildings, including any proposed amendments to County law.

Approved:

Craig L. Rice, President, County Council

Approved:

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council