

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

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  
Sections 18A-34, 18A-35, 18A-36, and 18A-37  
Article 6  
Sections 18A-38, 18A-39, 18A-40, 18A-41, 18A-42, and 18A-43

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

48 *The County Council for Montgomery County, Maryland approves the following Act:*  
49  
50

51 **Sec. 1. Chapter 18A is amended by amending Article 5 to add Sections**  
52 **18A-34, 18A-35, 18A-36, and 18A-37; Article 6, consisting of Sections 18A-38,**  
53 **18A-39, 18A-40, 18A-41, 18A-42, and 18A-43 as follows:**

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

55 **18A-34 – 18A-37. Reserved.**

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

57 **18A-38. Definitions.**

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

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

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

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

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

72 *Covered building* means any County building, Group 1 covered building, or  
73 Group 2 covered building. *Covered building* does not include any building  
74 with more than 10% occupancy which is used for

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

- 76 (2) warehousing;  
77 (3) self storage; or  
78 (4) a use classified as manufacturing and industrial or transportation,  
79 communication, and utilities.

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

83 Department means the Department of Environmental Protection.

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

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

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

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

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

102 Gross floor area means the sum of the gross horizontal area of the several  
103 floors of a building or structure measured from the exterior faces of the  
104 exterior walls or from the center line of party walls. In a covered but  
105 unenclosed area, such as a set of gasoline pumps or a drive-through area,  
106 gross floor area means the covered area. Gross floor area does not include  
107 any:

- 108 (1) basement or attic area with a headroom less than 7 feet 6 inches;
- 109 (2) area devoted to unenclosed mechanical, heating, air conditioning, or  
110 ventilating equipment;
- 111 (3) parking structure; or
- 112 (4) accessory structure to a residential building.

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

116 Reported benchmarking information means the descriptive information  
117 about a building, its operating characteristics, and information generated by  
118 the benchmarking tool regarding the building's energy consumption and  
119 efficiency. Reported benchmarking information includes the building  
120 identification number, address, gross floor area, energy performance score,  
121 energy use intensity, and annual greenhouse gas emissions.

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

124 **18A-39. Energy use benchmarking.**

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

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

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

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

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

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

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

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

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

148 (3) is new construction and received its certificate of use and  
149 occupancy during the calendar year for which benchmarking is  
150 required.

151 **18A-40. Data Verification.**

152 (a) Verification required. Before the first benchmarking deadline  
153 required by Section 18A-39, and before each third benchmarking  
154 deadline thereafter, the owner of each covered building must assure  
155 that reported benchmarking information for that year is verified by a  
156 licensed professional. The verification must be a stamped and signed  
157 statement by a licensed professional attesting to the accuracy of the  
158 information. If the Director requests, the owner of a covered building  
159 must produce the statement available for the most recent year in  
160 which verification was required.

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

166 **18A-41. Solicitation of compliance information from tenants.**

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

174 (b) Tenant response. Within 30 days after receiving a request for  
175 information from the building owner, each tenant of a unit in a  
176 covered building must provide the building owner with all

177 information that the owner cannot otherwise acquire that is necessary  
178 to comply with this Article.

179 (c) Failure of tenant to provide information.

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

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

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

191 (B) the owner benchmarked the building under Section 18A-  
192 39, using all information otherwise available to the  
193 owner.

194 **18A-42. Annual report; disclosure of benchmarking information.**

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

199 (1) summary statistics on the most recent reported energy  
200 benchmarking information;

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

203 (3) for County buildings;

- 204                    (A) the scores of County buildings benchmarked; and
- 205                    (B) whether the Director recommends any energy efficiency
- 206                    improvements for specific buildings.

207        **(b)** Disclosure of benchmarking information. The Director must make  
208        reported benchmarking information readily available to the public,  
209        including on the open data website created under Section 2-154, and  
210        the Director may exempt information from disclosure only to the  
211        extent that disclosure is prohibited under federal or state law.

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

214                (1) any individually-attributable reported benchmarking  
215                information from the first calendar year that a covered building  
216                is required to benchmark; and

217                (2) any individually-attributable reported benchmarking  
218                information relating to a covered building that contains a data  
219                center, television studio, or trading floor that together exceeds  
220                10% of the gross square footage of the individual building until  
221                the Director finds that the benchmarking tool can make  
222                adequate adjustments for these facilities. When the Director  
223                finds that the benchmarking tool can make adequate  
224                adjustments, the Director must report this data in the annual  
225                report.

226        **18A-43. Regulations; penalties.**

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

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



231

232

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

233

(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.

234

235

236

237

(b) The Work Group must:

238

(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

239

240

241

(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.

242

243

244

245 *Approved:*

246

247

248

\_\_\_\_\_  
Craig L. Rice, President, County Council

\_\_\_\_\_  
Date

249

*Approved:*

250

251

252

\_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_  
Date

253

*This is a correct copy of Council action.*

254

255

256

\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

\_\_\_\_\_  
Date