



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

April 1, 2021

TO: Tom Hucker, Council President

FROM: Marc Elrich, County Executive

A handwritten signature in black ink, appearing to read "Marc Elrich".

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.

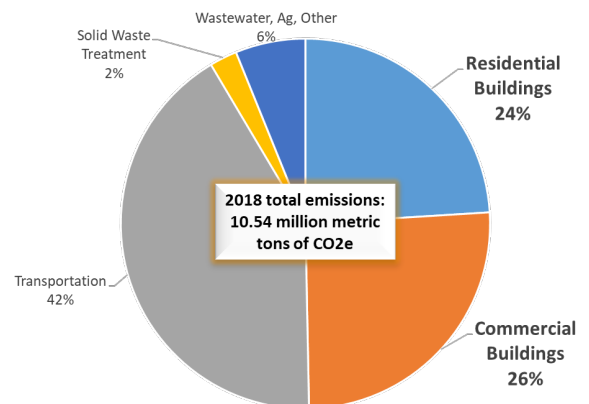


Figure 1. 2018 GHG Emissions

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

¹ Montgomery County’s GHG emissions inventory, 2018.

<https://www.montgomerycountymd.gov/green/climate/ghg-inventory.html>

² Institute for Market Transformation. “Building Performance Standards Are A Powerful New Tool in the Fight Against Climate Change.” <https://www.imt.org/resources/building-performance-standards-are-a-powerful-new-tool-in-the-fight-against-climate-change>

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:

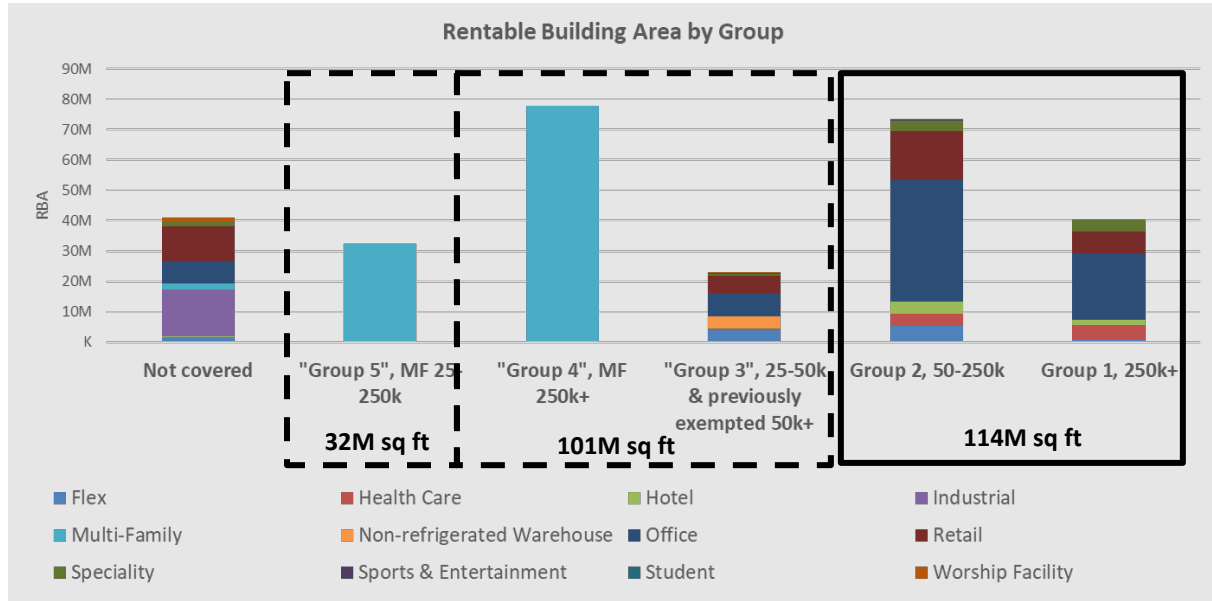


Figure 2. Buildings that would be covered by the amended Benchmarking Law.

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:

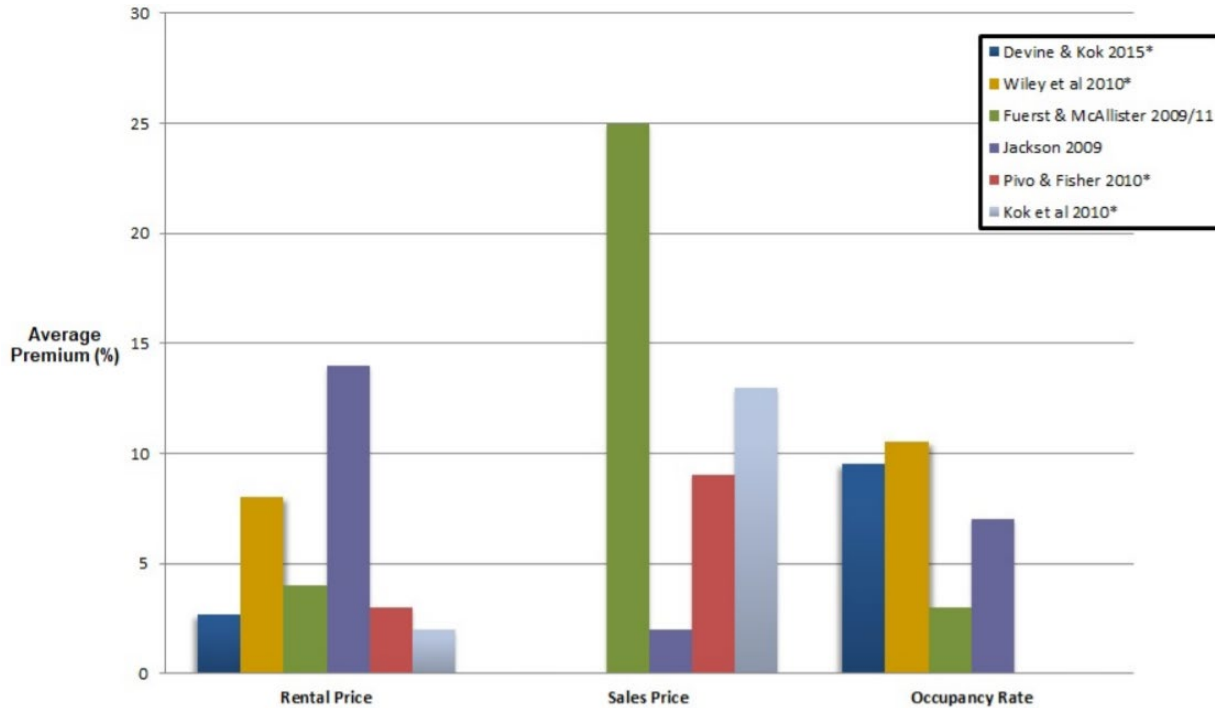


Figure 3. Added Value of ENERGY STAR-Labeled Commercial Buildings in the U.S. Market.
Source: Institute for Market Transformation, 2016.

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;

³ U.S. Environmental Protection Agency. “Quantifying the Multiple Benefits of Energy Efficiency and Renewable Energy: A Guide for State and Local Governments.” <https://www.epa.gov/statelocalenergy/quantifying-multiple-benefits-energy-efficiency-and-renewable-energy-guide-state>

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>) 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:

⁴ American Council for an Energy-Efficient Economy Fact Sheet. "How Does Energy Efficiency Create Jobs?" <https://www.aceee.org/files/pdf/fact-sheet/ee-job-creation.pdf>

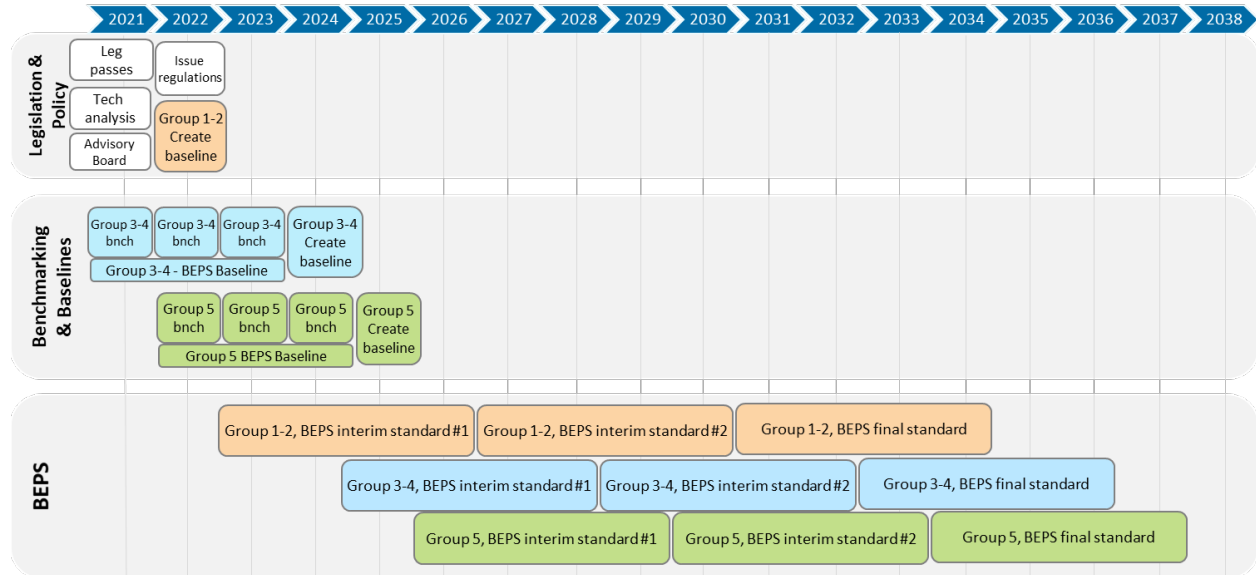


Figure 4. Proposed BEPS timeline.

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.

Bill No. XX-21
Concerning: Environmental Sustainability
-
Revised: [date] Draft No. [#]
Introduced: [date]
Expires: [18 mos. after intro]
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

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
Sections 18A-38A, 18A-38B, 18A-39, 18A-42, and 18A-43

By adding

Montgomery County Code
Chapter 18A, Environmental Sustainability
Sections 18A-38, 18A-42A, 18A-42B, 18A-42C, 18A-44, 18A-45, and 40-10B

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

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

1 **Sec. 1. Sections 18A-38A, 18A-38B, 18A-39, 18A-42, and 18A-43 are amended**
2 **and Sections 18A-38, 18A-42A, 18A-42B, 18A-42C, 18A-44, 18A-45, and 40-10B**
3 **are added as follows:**

4 **Article 6. Building Energy Use Benchmarking and Performance Standards.**
5 **18A-38[A]. Intent.**

6 The intent of this Article is to:

- 7 (a) * * *
- 8 (b) engage the commercial and multifamily residential building sector with
9 building energy information crucial to adopting energy conservation
10 and efficiency opportunities;
- 11 (c) * * *
- 12 (d) strengthen the local economy by encouraging more efficient business
13 operations and providing new opportunities for local businesses that
14 provide energy conservation and efficiency services; [and]
- 15 (e) recognize building owners that have made investments to improve their
16 building energy performance and expand in-house capacity for energy
17 management[.]; and
- 18 (f) improve the energy performance of covered buildings through
19 established building energy performance standards, thus reducing
20 greenhouse gas emissions from the built environment and helping the
21 County achieve its ambitious climate action goal of zero greenhouse gas
22 emissions by 2035.

23 **18A-38[B]A. Definitions.**

24 In this Article, the following words have the meanings indicated:
25 Affordable housing means a dwelling unit whose sale or rental price does not
26 exceed that of a moderately priced dwelling unit under Chapter 25A or group
27 senior assisted housing.

28 *Benchmark* means to track and input a building’s energy consumption data and
29 other relevant building information for 12 consecutive months, as required by
30 the benchmarking tool, to quantify the building’s energy use.

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

35 *Building* means:

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

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

43 (A) are serviced by a common energy meter,

44 (B) have a common heating or cooling system,

45 (C) share interior common areas, or

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

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

51 *Building performance improvement plan* means a document in a format
52 approved by the Director submitted by a covered building owner and approved
53 by the Director as described in this Article.

54 Building type means a category of covered buildings subject to the same final
55 performance standards.

56 * * *

57 County-owned covered building means [any] a building owned by the
58 County[, or any group of buildings owned by the County that have the same
59 property identification number, that] whose gross floor area equals or exceeds
60 [50,000] 25,000 [in total building] square [footage] feet.

61 Covered building means [any] a County-owned [building], Group 1 [covered
62 building], [or] Group 2, Group 3, Group 4, or Group 5 covered
63 building. [Covered building does not include any building with more than
64 10% of total building square footage which is used for

- 65 (1) public assembly in a building without walls;
- 66 (2) warehousing;
- 67 (3) self storage; or
- 68 (4) a use classified as manufacturing and industrial or transportation,
69 communication, and utilities.]

70 * * *

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

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

76 Gross floor area means the total building square footage measured between
77 the principal exterior surfaces of the enclosing fixed walls of a building. Gross
78 floor area consists of all areas inside the building, including lobbies, tenant
79 areas, common areas, meeting rooms, break rooms, the base level of atriums,
80 restrooms, elevator shafts, stairwells, mechanical equipment areas, basements,

81 and storage rooms. Gross floor area does not include exterior spaces,
82 balconies, patios, exterior loading docks, driveways, covered walkways,
83 outdoor play courts (e.g., tennis, basketball), parking, the interstitial space
84 between floors (which house pipes and ventilation), and crawl spaces. Gross
85 floor area is not the same as rentable space, but rather includes all area inside
86 the building(s).

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

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

96 *Group 3 covered building means:*

97 (1) a privately owned nonresidential covered building whose gross floor
98 area equals or exceeds 25,000 square feet but is less than 50,000 square
99 feet, or

100 (2) a privately owned nonresidential covered building whose gross floor
101 area equals or exceeds 50,000 square feet and whose use type was
102 previously exempted under this Article.

103 *Group 4 covered building* means a privately owned multifamily residential or
104 mixed-use covered building whose gross floor area equals or exceeds 250,000
105 square feet.

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

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

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

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

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

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

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

128 Normalized net site EUI means the total normalized net site energy use
129 consumed by a covered building in one year divided by the total gross floor
130 area of the building expressed in kBtu/GSF.

131 Owner means an individual or legal entity in whose name a building is titled,
132 or in the case of a community association, the governing body of either a
133 condominium or a cooperative housing corporation.

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

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

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

141 * * *

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

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

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

156 Site energy use intensity or site EUI means a numeric value calculated by the
157 benchmarking tool that represents the energy consumed by a covered building

158 relative to its size in terms of energy used per square foot of gross floor area
159 per year.

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

162 [*Total building square footage* means the sum of the gross horizontal area of
163 the several floors of a building or structure measured from the exterior faces of
164 the exterior walls or from the center line of party walls. In a covered but
165 unenclosed area, such as a set of gasoline pumps or a drive-through area, total
166 building square footage means the covered area. Total building square
167 footage does not include any:

- 168 (1) basement or attic area with a headroom less than 7 feet 6 inches;
- 169 (2) area devoted to unenclosed mechanical, heating, air conditioning, or
170 ventilating equipment;
- 171 (3) parking structure; or
- 172 (4) accessory structure to a residential building.]

173 **18A-38B. Applicability.**

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

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

181 **18A-39. Energy use benchmarking.**

- 182 (a) *County-owned covered buildings.*
 - 183 (1) No later than June 1, 2015, and every June 1 thereafter, the
184 County must benchmark any County-owned covered building[s]

185 whose gross floor area equals or exceeds 50,000 square feet for
186 the previous calendar year and report the benchmarking
187 information to the Department.

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

193 (b) * * *

194 (c) * * *

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

199 (e) Group 5 covered buildings. No later than June 1, 2023, and every June
200 1 thereafter, the owner of any Group 5 covered building must
201 benchmark the building for the previous calendar year and report the
202 benchmarking information to the Department.

203 (f) Newly constructed covered building. Following the first full calendar
204 year that energy data can be collected and that the building was
205 occupied, on average, by at least one full-time-equivalent employee (40
206 person-hours per week) exclusive of security guards, janitors,
207 construction workers, landscapers, and other maintenance personnel
208 throughout the calendar year being reported, the owner of any newly
209 constructed covered building must benchmark the building and report to
210 the Department no later than June 1 of that following year, and every
211 June 1 thereafter.

212 [(d)] (g) *Waiver.* [The Director may waive the benchmarking
213 requirements of this Section if] For any time period for which the owner
214 of a covered building documents, in a form required by regulation, [that
215 the building] any of the conditions below, the Director may waive the
216 benchmarking requirements of this Section[:].

- 217 (1) [is in financial] Financial distress, defined as a building that:
218 (A) is the subject of a tax lien sale or public auction due to
219 property tax arrearages;
220 (B) is controlled by a court appointed receiver; or
221 (C) was recently acquired by a deed in lieu of foreclosure;
222 (2) [had average physical occupancy of less than 50% throughout the
223 calendar year for which benchmarking is required] On average,
224 less than one full-time-equivalent employee occupied the
225 building during the calendar year being reported; [or]
226 (3) The covered building is [new] newly [construction] constructed
227 and has received its certificate of use and occupancy during the
228 calendar year for which benchmarking is required[.]; or
229 (4) The covered building was demolished or received its demolition
230 permit during the calendar year for which benchmarking is
231 required.

232 **18A-42. Establishment of building energy performance standards.**

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

- 236 (1) increase the energy efficiency of existing covered buildings and
237 expedite the reduction of greenhouse gas emissions from the
238 building sector;

- 239 (2) use normalized net site EUI as a performance metric wherever
240 feasible or net site EUI if the Director determines that
241 normalization is not practical as performance metric;
242 (3) account for onsite solar generation in the performance metric;
243 (4) use the benchmarking tool to report building energy performance
244 to the County; and
245 (5) utilize available data sources and best practices to establish
246 interim and final performance standards.

247 (b) *Building types.*

- 248 (1) No later than June 1, 2022, the County Executive must issue
249 Method (2) regulations establishing building types for every
250 covered building.
251 (2) Covered buildings within each building type must have shared
252 characteristics that facilitate the implementation and enforcement
253 of this Article. The Department may define one or more building
254 types to be identical to ENERGY STAR property type categories.
255 (3) All covered buildings within the same building type category
256 must be subject to the same final performance standards that
257 facilitate the implementation and enforcement of this Article.

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

- 260 (1) County-owned covered buildings whose gross floor area equals
261 or exceeds 50,000 square feet, Group 1 covered buildings, and
262 Group 2 covered buildings: Average of the 2 years with the
263 highest normalized net site EUI between calendar year 2018 and
264 calendar year 2021.

- 265 (2) County-owned covered buildings whose gross floor area is at
266 least 25,000 square feet but not greater than 50,000 square feet,
267 Group 3, and Group 4 covered buildings: Average of the 2 years
268 with the highest normalized net site EUI between calendar year
269 2021 and calendar year 2023.
- 270 (3) Group 5 covered buildings: Average of the 2 years with the
271 highest normalized net site EUI between calendar year 2022 and
272 calendar year 2024.
- 273 (4) Newly constructed covered buildings: Average of the 2 years
274 with the highest normalized net site EUI over the first 3 years of
275 benchmarking reporting.
- 276 (d) *Interim and final performance standards.*
- 277 (1) No later than June 1, 2022, the County Executive must issue
278 Method (2) regulations establishing final performance standards
279 for each building type using the normalized site EUI performance
280 metric wherever feasible or site EUI if the Director determines
281 that normalization is not practical.
- 282 (2) The Department must calculate each interim performance
283 standard for each covered building with the starting point set at
284 the covered building's performance baseline and continuing to
285 the final performance standard.
- 286 (3) Each covered building must demonstrate progress towards the
287 final performance standard by complying with interim
288 performance standards every 4 years after the performance
289 baseline year as follows:

- 290 (A) County-owned covered buildings whose gross floor area
291 equals or exceeds 50,000 square feet, Group 1, and Group
292 2 covered buildings:
- 293 (i) Interim performance standards: December 31,
294 2026, and evaluated with June 1, 2027,
295 benchmarking, and December 31, 2030, and
296 evaluated with June 1, 2031, benchmarking.
- 297 (ii) Final performance standard: December 31, 2034,
298 and evaluated with June 1, 2035, benchmarking.
- 299 (B) County-owned covered buildings whose gross floor area is
300 at least 25,000 square feet but not greater than 50,000
301 square feet, Group 3, and Group 4 covered buildings:
- 302 (i) Interim performance standards: December 31,
303 2028, evaluated with June 1, 2029, benchmarking,
304 and December 31, 2032, evaluated with June 1,
305 2033, benchmarking.
- 306 (ii) Final performance standard: December 31, 2036,
307 evaluated with June 1, 2037, benchmarking.
- 308 (C) Group 5 covered buildings:
- 309 (i) Interim performance standards: December 31,
310 2029, evaluated with June 1, 2030, benchmarking,
311 and December 31, 2033, evaluated with June 1,
312 2034, benchmarking.
- 313 (ii) Final performance standard: December 31, 2037,
314 evaluated with June 1, 2038, benchmarking.

- 315 (D) Newly constructed buildings will be added to a coverage
316 group (Group 1, Group 2, Group 3, Group 4, or Group 5)
317 based on gross floor area and building type:
- 318 (i) Interim performance standards: Evaluated with the
319 first interim standard of the building’s coverage
320 group following creation of the performance
321 baseline.
- 322 (ii) Final performance standard: Evaluated with the final
323 performance standard of the building’s coverage
324 group, if the performance baseline is created before
325 the final performance standard.
- 326 (4) Covered buildings must maintain the final performance standards
327 established by regulation.
- 328 (5) Covered buildings must demonstrate compliance with the interim
329 and final performance standards by reporting building energy
330 benchmarking data to the Department using the benchmarking
331 tool. The Department must determine compliance by comparing
332 the performance metric against the interim or final performance
333 standards for the applicable building type.

334 **18A-42A. Building Performance Improvement Board.**

- 335 (a) Established. The County Executive must appoint, subject to
336 confirmation by the Council, a Building Performance Improvement
337 Board comprised of 15 voting members. Designees of the Department
338 of Environmental Protection, Department of General Services, and
339 Department of Permitting Services are ex officio nonvoting members of
340 the Board.

- 341 **(b) Membership.** Each voting member of the Board must be a resident of
342 the County or a member of the governing body or staff of an entity
343 doing business in the County. The Board should include:
- 344 (1) Representatives of local electricity or natural gas utilities;
 - 345 (2) Providers of energy efficiency, building resilience and/or
346 renewable energy services or consulting;
 - 347 (3) Owners or managers of affordable housing;
 - 348 (4) Owners or managers of multi-family residential buildings
349 containing market-rate units;
 - 350 (5) Nonresidential building owners or managers;
 - 351 (6) Technical building design or operations professionals;
 - 352 (7) Providers of facilities, mechanical, or similar engineering
353 services;
 - 354 (8) Commercial or multi-family residential construction finance or
355 investment professionals,
 - 356 (9) Representatives of nonprofit organizations dedicated to climate
357 action, resiliency, public health, green building, economic
358 development, or building decarbonization; and
 - 359 (10) Representatives of nonprofit organizations dedicated to racial
360 equity or environmental justice.
- 361 **(c) Terms.** Each voting member serves a 3-year term beginning on January
362 1. Of the members first appointed, one-third must be appointed for 1-
363 year terms, one-third must be appointed for 2-year terms, and one-third
364 must be appointed for 3-year terms. A member must not serve more
365 than 2 consecutive full terms. A member appointed to fill a vacancy
366 serves the rest of the unexpired term. Members continue in office until
367 their successors are appointed and qualified. The Board must elect one

368 of its members as Chair to be who must serve as such for one calendar
369 year or until a successor is elected.

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

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

376 (1) Building type groupings;

377 (2) Interim and final performance standards for each building type;

378 (3) Managing situations where ownership of a building is transferred
379 or a building's type changes;

380 (4) Building performance improvement plan technical review and
381 approval processes;

382 (5) Complementary programs or policies, with particular attention to
383 assistance or accommodations for challenged or under-resourced
384 sectors, such as affordable housing, non-profit organizations, and
385 small businesses; and

386 (6) Enforcement of benchmarking requirements and performance
387 standards.

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

389 **18A-42B. Building performance improvement plans.**

390 (a) If a covered building owner cannot reasonably meet one or more of the
391 applicable interim or final performance standards due to economic
392 infeasibility or other circumstances beyond the owner's control, based
393 on guidelines established by regulation, the owner may submit a
394 proposed building performance improvement plan to the Department for

395 review and approval by the Director in consultation with the Building
396 Performance Improvement Board.

397 (b) A building performance improvement plan must include:

398 (1) documentation of economic infeasibility or other circumstances
399 beyond the owner's control such that interim or final performance
400 standards are not met;

401 (2) a list of potential improvement measures, including engineering
402 calculations of energy savings and a cost-benefit analysis of each
403 potential improvement measure;

404 (3) a plan and timeline for achieving energy improvements to the
405 building's performance that will provide cost-effective energy
406 savings based on guidelines established by regulation, including
407 the estimated savings to be realized by implementing all of the
408 cost-effective measures identified in the plan; and

409 (4) procedures for correcting any noncompliance or deviation from
410 the plan.

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

415 (d) If, after consulting with the Building Performance Improvement Board,
416 the Director approves the building performance improvement plan, the
417 owner must record the building performance improvement plan as a
418 covenant in the County land records and deliver a certified copy of the
419 recorded plan to the Department. After the Director receives the
420 certified copy of the recorded plan, the covered building will be deemed
421 to be in compliance with the applicable interim or final performance

422 standards as long as the owner fulfills the terms of the building
423 performance improvement plan within the timeline specified in the plan.

424 **18A-42C. Extensions and adjustments.**

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

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

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

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

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

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

447 **18A-[42]43. Annual report; disclosure of benchmarking and energy**
448 **performance information.**

- 449 (a) *Annual report required.* By October 1 of each year, the Director must
450 submit a benchmarking and building performance report to the County
451 Executive and County Council. The report must review and evaluate
452 energy efficiency in covered buildings, including:
- 453 (1) summary statistics on the most recent reported energy
454 benchmarking information, including information on the
455 completeness and level of data quality of the building energy data
456 being reported by building type;
 - 457 (2) discussion of any energy efficiency trends, cost savings, and job
458 creation resulting from energy efficiency improvements; [and]
 - 459 (3) for County-owned covered buildings:
 - 460 (A) the scores of County-owned covered buildings
461 benchmarked; and
 - 462 (B) whether the Director recommends any energy efficiency
463 improvements for specific buildings; and
 - 464 (4) building energy performance summary statistics, if an interim or
465 final performance standard occurs for a covered building type in
466 the current reporting cycle.
- 467 (b) *Disclosure of benchmarking and building energy performance*
468 *standards [information] data.* The Director must make reported
469 aggregated benchmarking and building energy performance standard
470 [information] data readily available to the public, including on the open
471 data website created under Section 2-154, and the Director may exempt
472 information from disclosure only to the extent that disclosure is
473 prohibited under federal or state law.
- 474 (c) *Exceptions to disclosure.* To the extent allowable under state law, the
475 Director must not make the following readily available to the public:

- 476 (1) any individually[-]attributable reported benchmarking
477 information from the first calendar year that a covered building is
478 required to benchmark; [and]
- 479 (2) any individually[-]attributable reported benchmarking or building
480 energy performance standards information relating to a covered
481 building if the disclosure of the covered building's energy use
482 would be harmful to the public interest and national security [that
483 contains a data center, or television studio that together exceeds
484 10% of the total building square footage of the individual
485 building until the Director finds that the benchmarking tool can
486 make adequate adjustments for these facilities. When the
487 Director finds that the benchmarking tool can make adequate
488 adjustments, the Director must report this data in the annual
489 report]; and
- 490 (3) Building performance improvement plans and associated
491 documentation attributable to an individual covered building.

492 **18A-[43]43A. Regulations[; penalties].**

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

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

496 **18A-43B. Penalties; enforcement.**

497 (a) A building owner must not knowingly provide false information
498 required under this Article to the Department. The Director may revoke
499 or modify an extension, adjustment, building performance improvement
500 plan, or compliance with benchmarking or the interim or final
501 performance standards in response to any false information provided by
502 the building owner.

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

504

505 **40-10B. Disclosure of covered building benchmarking and performance**
506 **standards information.**

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

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

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

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

514 (B) documentation of data verification; and

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

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

518 (A) performance baseline;

519 (B) interim and final performance standards; and

520 (C) building performance improvement plan.

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

525

526 Approved:

527

Tom Hucker, President, County Council

Date

528 *Approved:*

529

Marc Elrich, County Executive

Date

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

531

Selena Mendy Singleton, Clerk of the Council

Date

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 advise 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.

	FY21	FY22	FY23	FY24	FY25	FY26
Personnel Costs	\$0	\$75,643	\$334,627	\$411,917	\$411,917	\$411,917
Operating Expenses	\$0	\$180,000	\$430,000	\$780,000	\$780,000	\$780,000
Total	\$0	\$255,643	\$764,627	\$1,191,917	\$1,191,917	\$1,191,917

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.

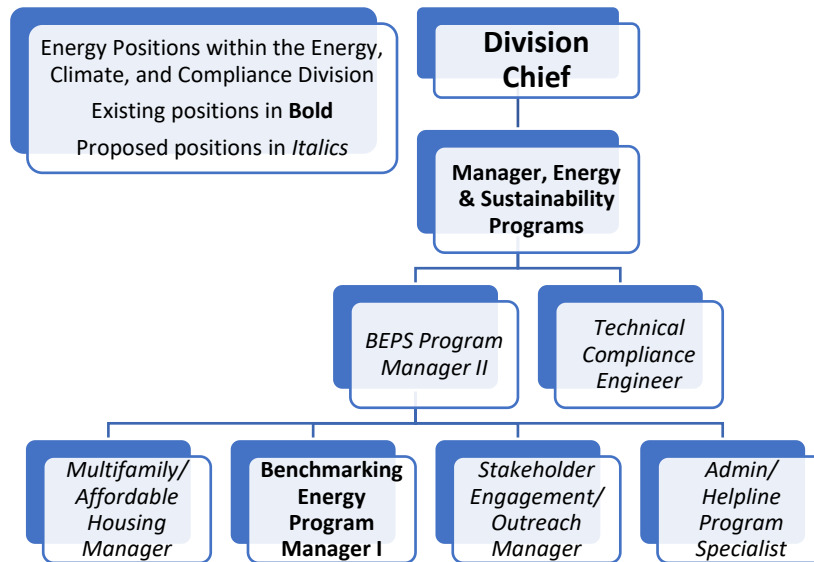
Not applicable.

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

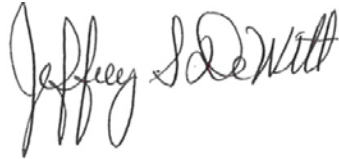
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

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

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: June 18, 2019

SUBJECT: Fiscal Impact Statement – “Fiscal Year 2020 Budget Support Act of 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.

Subtitle (V)(F) – Dementia Services Coordinator Amendment Act of 2019	43
Subtitle (V)(G) – Child and Family Services Agency Prevention Services Grants Act of 2019	44
Subtitle (V)(H) – Department of Health Care Finance Grant-Making Amendment Act of 2019	45
Subtitle (V)(I) – Medicaid Hospital Supplemental Payment Amendment Act of 2019	46
Subtitle (V)(J) – Not-for-Profit Hospital Corporation Fiscal Oversight and Transition Planning Amendment Act of 2019.....	47
Subtitle (V)(K) –D.C. Healthcare Alliance Reform Amendment Act of 2019	48
Subtitle (V)(L) – Fort Dupont Ice Arena Construction Acceleration Act of 2019.....	48
Subtitle (V)(M) - Leverage for Our Future Amendment Act of 2019.....	48
Subtitle (V)(N) – Senior Strategic Plan Clarification Amendment Act of 2019	48
Subtitle (V)(O) – Birth-to-Three for All DC Clarification Amendment Act of 2019	49
TITLE VI - TRANSPORTATION, PUBLIC WORKS, AND THE ENVIRONMENT.....	50
Subtitle (VI)(A) –Half Street Improvement Amendment Act of 2019.....	50
Subtitle (VI)(B) – Master Transportation Capital Projects Amendment Act of 2019.....	50
Subtitle (VI)(C) – Department of For-Hire Vehicles Amendment Act of 2019.....	51
Subtitle (VI)(D) – Parking Enforcement When a Motor Vehicle Operator Leaves the Site of a Violation Amendment Act of 2019.....	51
Subtitle (VI)(E) – Student, Foster Youth, Summery Youth Employee, and Adult Learner Transit Subsidies Act of 2019.....	52
Subtitle (VI)(F) – CleanEnergy Implementation Amendment Act of 2019	53
Subtitle (VI)(G) – Clean Rivers Impervious Area Charge Assistance Fund Amendment Act of 2019.....	55
Subtitle (VI)(H) – Residential Parking Permit Amendment Act of 2019.....	56
Subtitle (VI)(I) – Driving While Using a Mobile Telephone Minor Prohibition Amendment Act of 2019	57
Subtitle (VI)(J) – Office of Urban Agriculture Establishment Amendment Act of 2019	57
Subtitle (VI)(K) – Temporary Visitor Parking Permit Program Transfer Regulation Amendment Act of 2019.....	58
Subtitle (VI)(L) – Congestion Pricing Study Amendment Act of 2019	58
Subtitle (VI)(M) – Lead Service Line Replacement Amendment Act of 2019.....	58
TITLE VII – FINANCE AND REVENUE.....	59
Subtitle (VII)(A) –Keep Child Care Affordable Tax Credit Amendment Act of 2019	59
Subtitle (VII)(B) – Keep Housing Affordable Increased Property Tax Relief Act of 2019..	60
Subtitle (VII)(C) – Recordation and Transfer Taxes Amendment Act of 2019	61
Subtitle (VII)(D) – Internet Sales Tax Revenue Amendment Act of 2019	62
Subtitle (VII)(E) – Internet Sales Tax Commercial Property Tax Rate Amendment Act of 2019	62
Subtitle (VII)(F) - Sports Wagering Revenue Amendment Act of 2019.....	63
Subtitle (VII)(G) – Healthy Kids Revenue Amendment Act of 2019	64

Fiscal Impact of the Student, Foster Youth, Summer Youth Employee, and Adult Learner Transit Subsidies Amendment Act of 2019					
	FY 2020	FY 2021	FY 2022	FY 2023	Four-year Total
DOES Savings - Ending overlap between SYEP and Kids Ride Free subsidies	(\$362,000)	(\$368,335)	(\$374,781)	(\$381,340)	(\$1,486,455)
DOES Cost - Increasing SYEP subsidy	\$17,070	\$17,369	\$17,673	\$17,982	\$70,093
DDOT Cost - Increasing Adult Learner subsidy	\$200,000	\$203,500	\$207,061	\$210,685	\$821,246
Total Fiscal Impact	(\$144,930)	(\$147,466)	(\$150,047)	(\$152,673)	(\$595,116)

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

Background

In late 2018, the Council passed the CleanEnergy DC Omnibus Amendment Act (Act).¹³³ 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,¹³⁴ 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 tax¹³⁵ 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)).

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					
(\$000s)					
	FY 2020	FY 2021	FY 2022	FY 2023	Total
DISTRICT ENERGY COSTS					
Solar Compliance	\$0	\$1,000	\$1,190	\$1,300	\$3,490
SETF Assessments	\$742	\$698	\$661	\$621	\$2,722
Total Energy Costs	\$742	\$1,698	\$1,851	\$1,921	\$6,212
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 IMPLMENTATION COSTS	\$25,172	\$24,739	\$22,621	\$22,420	\$94,951

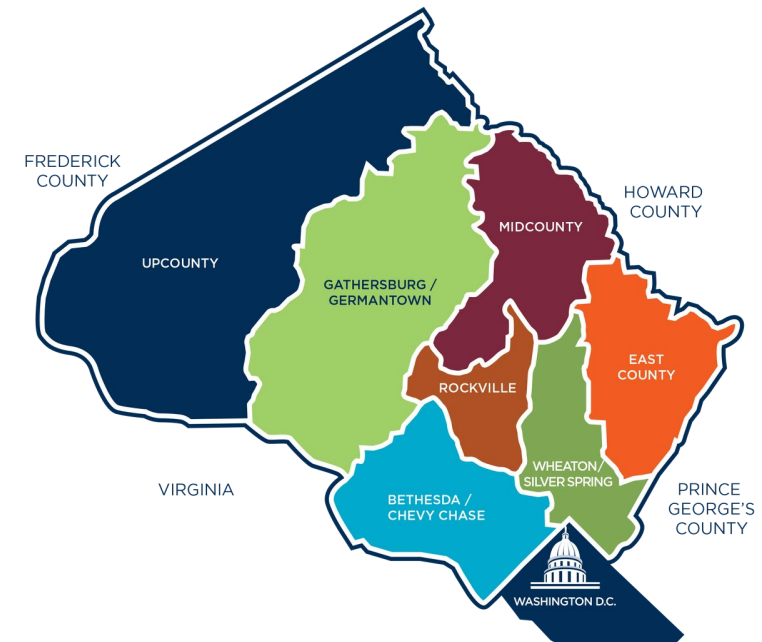
Revenues and Commitments for the Sustainable Energy Trust Fund (SETF)
Fiscal Year 2020 - Fiscal Year 2023

¹³⁶ D.C. Official Code § 8-1774.10.



March 2021

Summary of Building Energy Performance Standards (BEPS) Legislation



Learn more at <https://www.montgomerycountymd.gov/green/energy/beps.html>

Summary

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

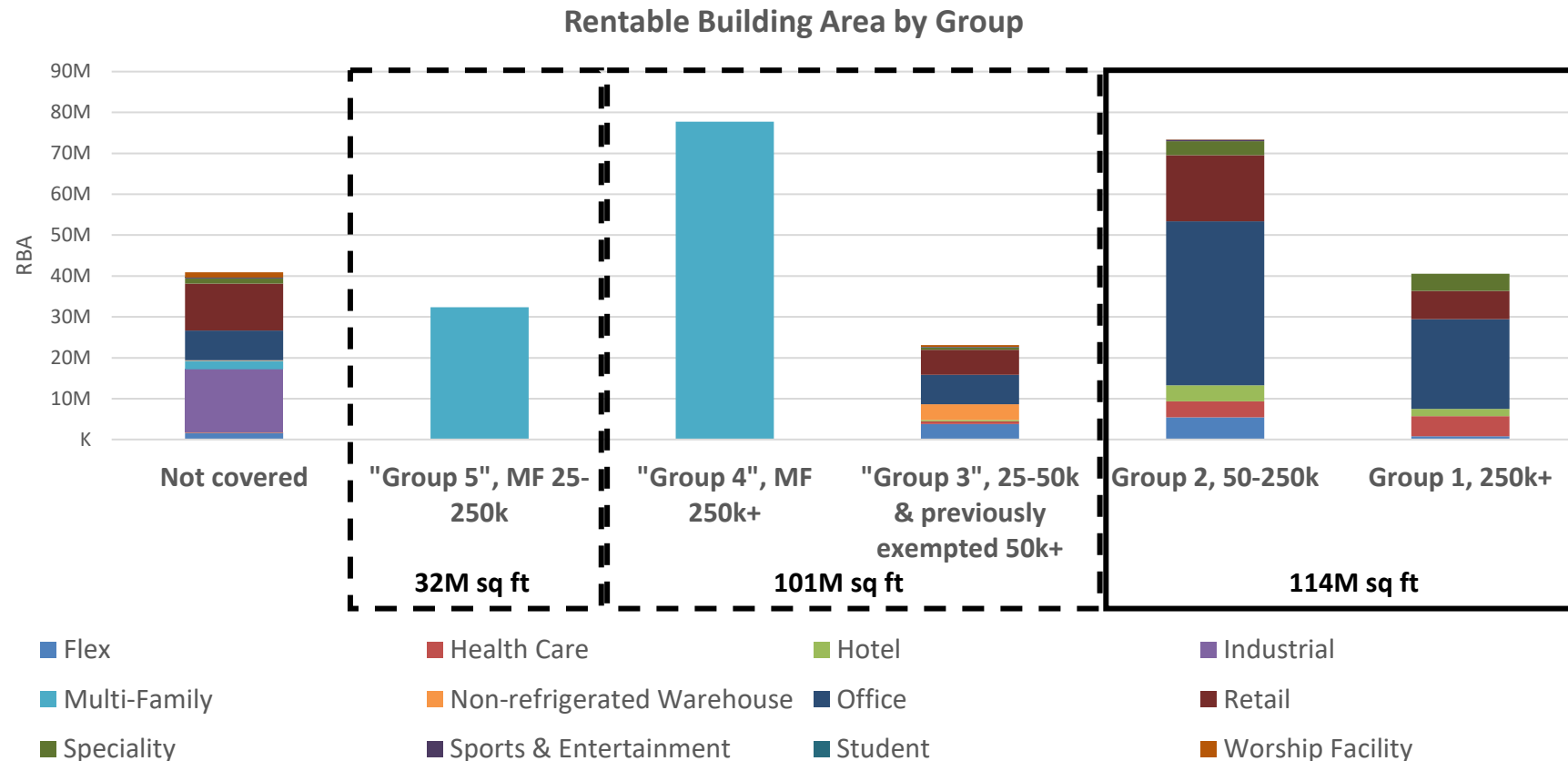
- Jurisdictions across the country are beginning to adopt BEPS legislation and using a variety of strategies and metrics
- DEP engaged stakeholder group in 2019-2020 to gather [policy recommendations](#)
- Key guiding principle in County's BEPS policy: **Balancing flexibility and immediate action**
-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

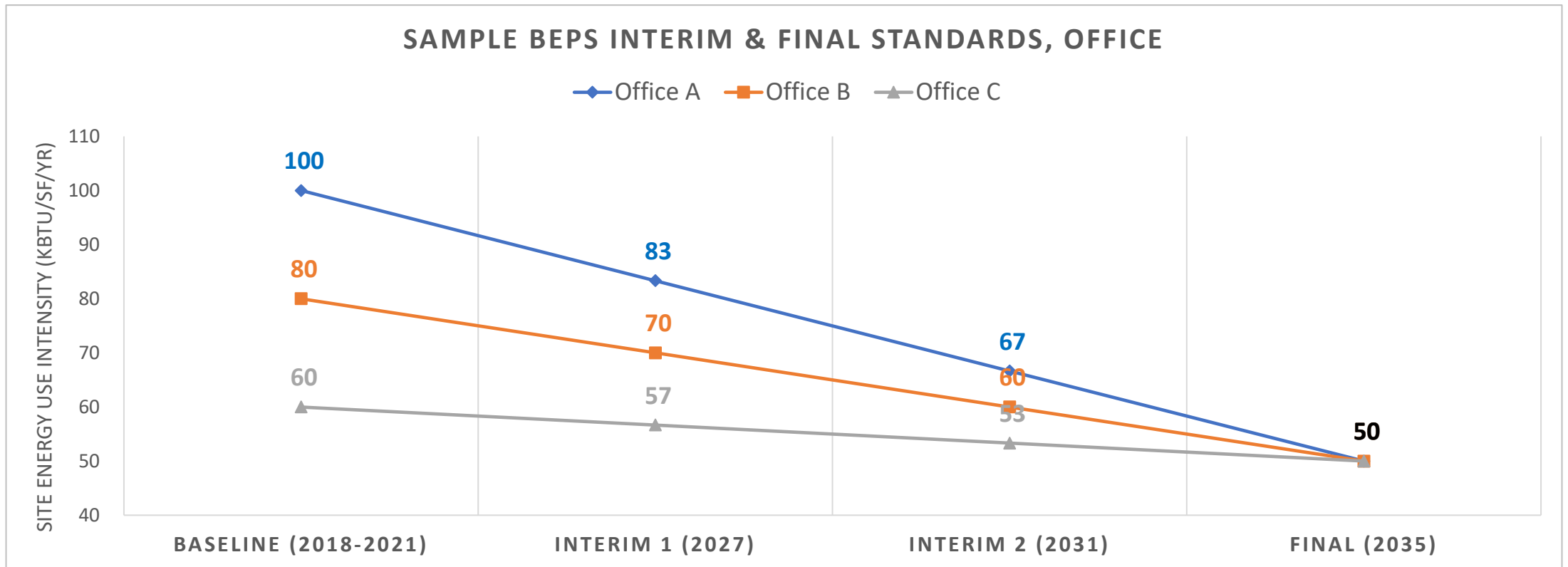
Proposed Benchmarking Law Impact

- 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



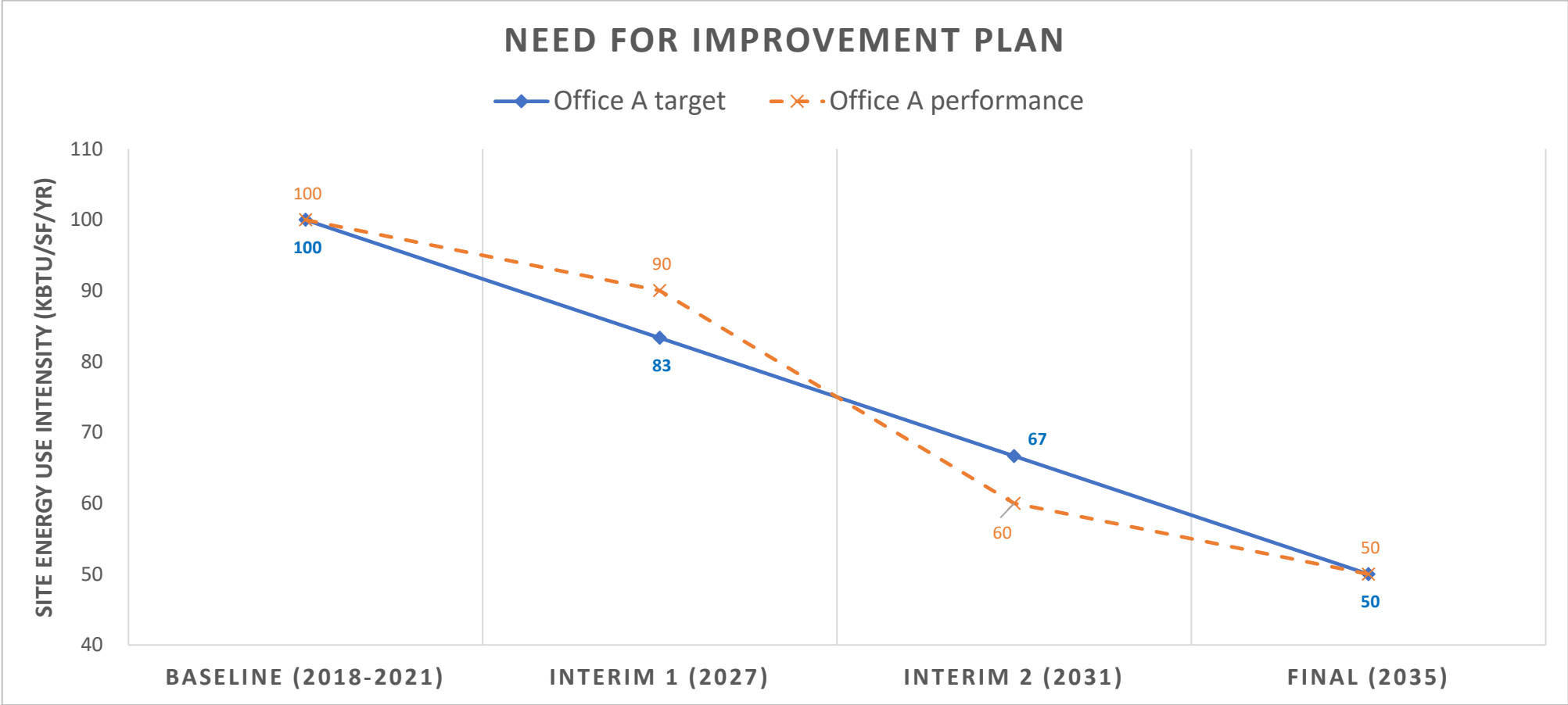
BEPS Policy Overview

- 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

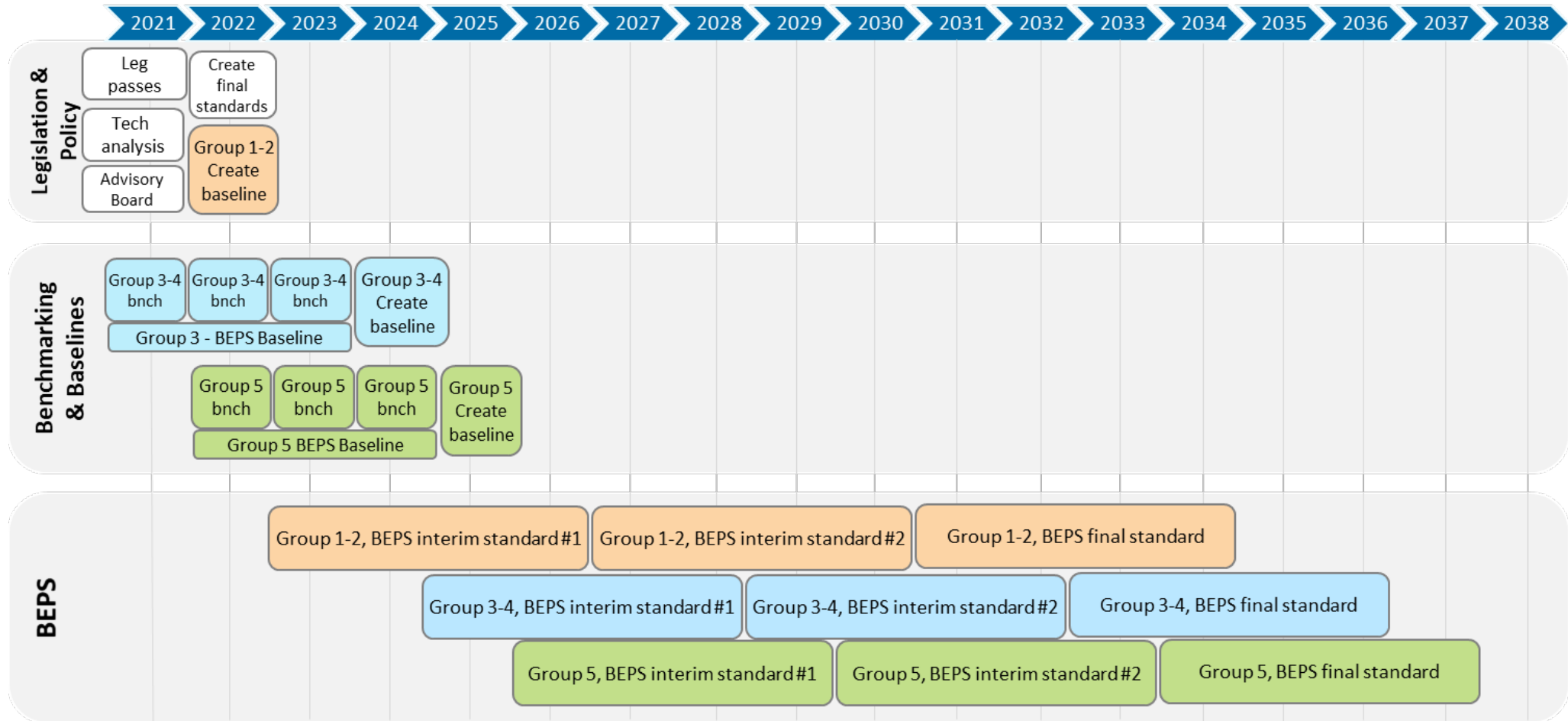
- If a property owner does not meet the BEPS target or have a DEP-approved BPIP, then the building would be non-compliant and subject to a Poor Performance Payment.
- The goal is to have an PPP at a level high enough where a building would prefer to be in compliance through meeting BEPS or filing an 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

BEPS Timeline

- 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

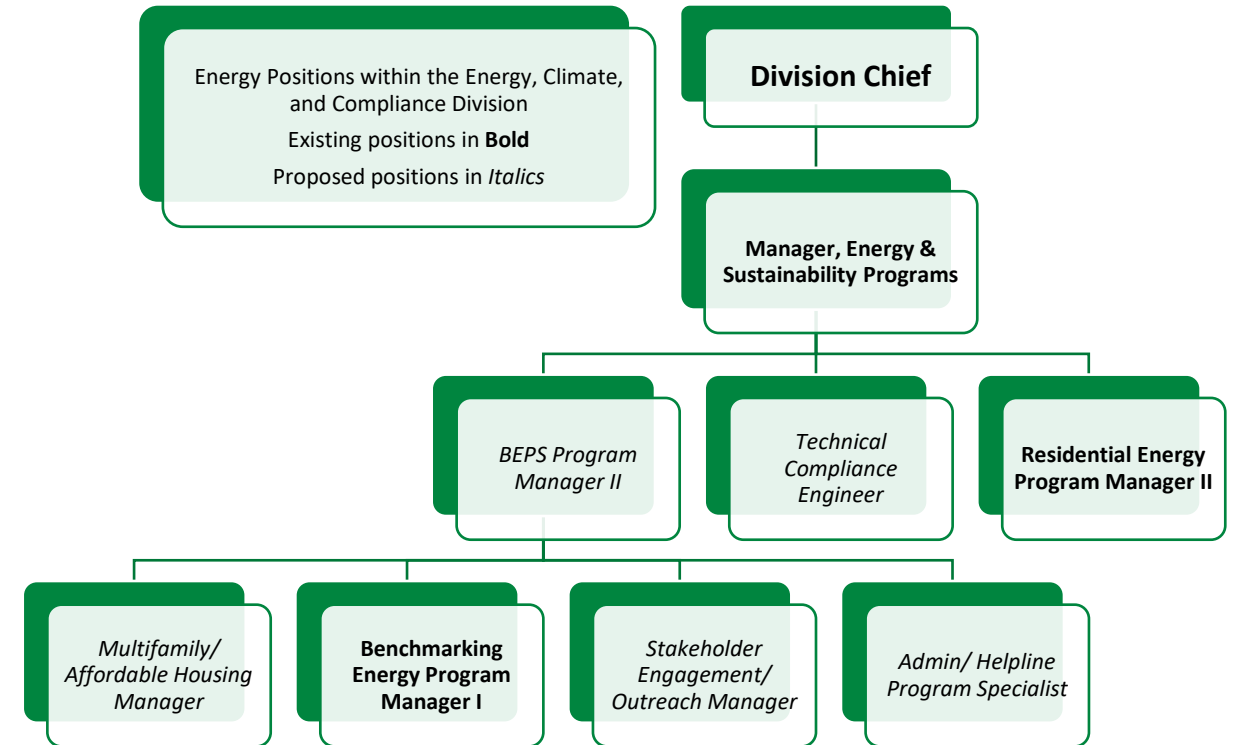


Summary of BEPS Legislation

	Policy elements
Covered Buildings	County, commercial, and multifamily 25K+ sq. ft.
Performance Standard	Long-term & interim standards by building type based on normalized site EUI with onsite solar given credit
Compliance Cycle	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
Equity	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.
BPIPs	Building performance improvement plans (BPIPs) required if targets are missed, as approved the Department
Advisory Board	Specific requirements for representation, like other County Advisory Boards (terms, compensation, etc.)

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.

**BOARD BILL NUMBER 219AA INTRODUCED BY ALDERWOMAN
HEATHER NAVARRO/ALDERMAN JACK COATAR/ALDERWOMAN ANNIE
RICE/ALDERMAN DAN GUENTHER/ALDERWOMAN MEGAN E.
GREEN/ALDERWOMAN CHRISTINE INGRASSIA/ALDERMAN BRET
NARAYAN**

1 An ordinance entitled “Building Energy Performance Standards”; the purpose of this
2 ordinance is to establish energy performance standards for certain buildings in the City of St.
3 Louis.

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

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

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

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

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

20 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

1 That by and through this ordinance entitled “Building Energy Performance Standards”, this
2 Board seeks to establish energy standards for certain buildings in the City.

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

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

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

10 B. “Owner” means any of the following:

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

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

14 3. The board in the case of a condominium;

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

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

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

22 D. “Condominium” means a site that combines separate ownership of individual units with
23 common ownership of other elements such as common areas.

1 E. “Covered property” means a building that is greater than or equal to 50,000 gross square feet
2 in total gross floor area. The term “covered property” shall not include any building owned by
3 the State of Missouri or the federal government.

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

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

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

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

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

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

- 21 1. had arrears of property taxes or water or refuse charges that resulted in the property’s
22 inclusion, within the prior 2 years, on the city’s annual tax lien sale list; or
23 2. Has a court appointed receiver in control of the asset due to financial distress; or

- 1 3. Is owned by a financial institution through default by the borrower; or
- 2 4. Has been acquired by a deed in lieu of foreclosure; or
- 3 5. Has a senior mortgage subject to a notice of default.

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

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

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

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

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

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

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

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

22 A. Standards for each property type will be set by May 4, 2021 through a stakeholder
23 engagement process overseen by the Building Energy Improvement Board. Standards will be

1 revised no later than every four years. The chief performance metric will be site energy use
2 intensity (EUI). Standards will be set no lower than the 65th percentile by property type such that
3 at least 65% of the buildings of that property type have a higher EUI.” 1. The Building Division
4 shall establish data verification requirements for each four-year compliance cycle.

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

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

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

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

16 C. Compliance cycles.

17 1. Performance standards will be set by May 4, 2021 by the Building Energy
18 Improvement Board and revised every four years thereafter. Following every compliance cycle,
19 there shall be a period of time of up to one year between each compliance cycle to allow the
20 Building Energy Improvement Board time to reevaluate and to update the building energy
21 performance standards. The first Building Energy Performance standards shall be approved no
22 later than May 4, 2021.

1 2. First Building Energy Performance Standard compliance cycle shall begin on the day
2 they are approved and end four years after that day. The compliance cycle will end no later than
3 May 1, 2025.

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

9 D. Compliance pathways

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

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

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

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

21 (b) make an alternative compliance payment to the Building Division or daily
22 ordinance violation as determined by the Building Commissioner.

1 E. Building Energy Improvement Board will create a pathway for buildings that benefit from
2 deep energy improvements and achieve energy performance well beyond the required
3 performance standard to be in compliance for 15 years.

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

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

13 A. Board Composition and Roles.

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

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

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

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

23 (c) Recommend complementary programs or policies;

1 (d) Review appeals regarding any action(s) taken due to this ordinance and the
2 Building Energy Awareness Ordinance (#70474)

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

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

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

9 a) Building Division

10 b) local utilities

11 c) a provider of energy efficiency or renewable energy services

12 d) affordable and/or multi-family housing representative

13 e) affordable housing tenant

14 f) labor

15 g) technical building design professional(s)

16 h) environmental non-profit

17 i) commercial building

18 j) engineering

19 4. A technical sub-committee shall also be established and charged with reviewing and
20 acting on alternative compliance plans and would consist of at least 80 percent of technical
21 experts. Members of the technical sub-committee may also be members of the full Building
22 Energy Improvement Board. The decision(s) of the sub-committee can be appealed to the full
23 Building Energy Improvement Board.

1 5. Alternates to Board. The alternates shall have all power, protection, and stipends as
2 the regular board members in accordance with Civil Service protection. The alternates shall be
3 appointed by the Mayor for four-year terms.

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

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

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

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

22 B. Meetings; Witnesses; Minutes.

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

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

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

15 C. Exemptions.

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

21 a) A demolition permit was issued or is demolition is planned during a compliance
22 cycle, provided that demolition work has commenced and energy-related systems have
23 been significantly compromised.

1 b) The Building Energy Improvement Board determines that due to special
2 circumstances unique to the applicant’s facility and not based on a condition caused by
3 actions of the applicant, strict compliance with provisions of this ordinance would cause
4 financial hardship or would not be in the public interest.

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

8 d) The property is primarily used for communications infrastructure.

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

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

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

18 A. Filing Date of Appeal.

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

21 B. Manner and Fee for Filing Appeals.

22 Appeals shall be taken by filing with the Secretary to the Board a notice of appeal on such
23 forms as prescribed by the Board specifying the grounds thereof. The Board Secretary shall

1 immediately transmit to the Board such notice and all papers constituting the record upon which
2 the action 12 appealed from is taken. The notice of appeal shall be accompanied by a fee of \$100.

3 C. Multiple Appeals.

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

9 D. Board Hearings; Notifications.

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

15 E. Appeals From Decisions of the Board.

16 Any person(s) jointly or severally aggrieved by the decision of the Energy Performance
17 Standards Board shall be entitled to judicial review of the decision rendered by the Board as
18 provided in the Administrative Procedure and Review Act of the State of Missouri, being Sections
19 536.100 - 536.140 of the Revised Statutes of Missouri.

20 F. Hearing Officer.

21 The Building Energy Improvement Board shall have the right to appoint a hearing officer
22 to hear and render a decision on any appeal filed with the Board.

1 The hearing officer shall be an attorney and on an approved list of attorneys who have
2 administrative law experience. The Director of Public Safety shall compile and maintain said list.
3 The hearing officer shall have such rights, responsibilities, and duties as the Building Energy
4 Improvement Board and the appellants shall have the same rights as an appellant appearing before
5 the Building Energy Improvement Board, including the right to appeal pursuant to Missouri's
6 Administrative Procedure and Review Act.

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

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

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

19 **SECTION ELEVEN. Maintenance of Records.**

20 Owners of covered property shall maintain records that are necessary for demonstrating
21 compliance with this article, including but not limited to, the energy and water bills and any reports
22 or forms received from tenants and utilities. All such records shall be preserved for a period of 7

1 years from the applicable submission date. At the request of the Commissioner, such records shall
2 be made available for inspection and audit by the Commissioner.

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

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

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

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

19 C. Additional available remedies. If any person violates the provisions of this article, the
20 City Counselor's Office may initiate an action for legal or equitable relief in any court with
21 appropriate jurisdiction. A petition for legal or equitable relief shall not be a bar against, or a
22 prerequisite for, taking any other action against any person.

1 D. Nonexclusivity. The remedies provided for in this article are not exclusive. The
2 Commissioner may take any, all, or combination of these actions, or any other action available at
3 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

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

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? ___Yes x_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

**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

- 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? Yes No

- 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? Yes No

- If yes, then is there a similar existing program or administrative subdivision? Yes No

- 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.

- 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.

Financial Estimate of Impact on General Fund			
Fiscal Impact	<u>Year 1 (current)</u>	<u>Year 2</u>	<u>Year 3</u>
Additional Expenditures			
Additional Revenue			
Net			
Financial Estimate of Impact on Special Funds			
Fiscal Impact	<u>Year 1 (current)</u>	<u>Year 2</u>	<u>Year 3</u>
Additional Expenditures			
Additional Revenue			
Net			

- 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
- o If yes, by whom? _____ .

OFFICE OF BUILDING PERFORMANCE BUDGET REQUEST FY21

11/13/2019

BUILDING DIVISION

ACTUAL

PROPOSED T.O.						INCREMENTAL COST
	Program Manager II	16M	\$	74,308.00	\$	6,734.00
	Government Services Analyst	16G	\$	54,860.00	\$	54,860.00
	Environmental Engineer	15G	\$	47,814.00	\$	47,814.00
	Secretary II	10G	\$	27,924.00	\$	27,924.00
			\$	204,906.00	\$	137,332.00
PROPOSED NS BUDGET REQUEST						
ACCT	ACCOUNT DESCRIPTION			AMOUNT REQUESTED		
5101000	Salaries Regular Employees		\$	204,906.00	\$	137,332.00
5136000	Soc Security Coverage		\$	15,675.31	\$	10,505.90
5137000	Employee Health Insurance		\$	33,600.00	\$	33,600.00
5138000	ERS Contribution		\$	25,818.16	\$	17,303.83
5138100	ERS Debt Contribution		\$	4,098.12	\$	2,746.64
5142000	Employees Life Insurance		\$	799.13	\$	535.59
5144201	Long Term Disability		\$	286.87	\$	192.26
5147000	Workers Comp		\$	2,971.14	\$	1,991.31
5197000	27th Pay Reserve		\$	901.59	\$	604.26
	Subtotal		\$	288,154.72	\$	204,207.54
5234000	Computer and Tech Supplies		\$	3,000.00	\$	2,000.00
5235000	Office Supplies		\$	1,000.00	\$	1,500.00
5634095	Computer and Tech Systems Development		\$	5,000.00	\$	5,000.00
5335000	Office and Computer		\$	2,500.00	\$	6,500.00
	TOTAL		\$	299,654.72	\$	219,207.54