

AGENDA ITEM #9
April 13, 2010

Public Hearing

MEMORANDUM

April 9, 2010

TO: County Council

FROM: Amanda Mihill, Legislative Analyst *A. Mihill*

SUBJECT: **Public Hearing:** Expedited Bill 10-10, Buildings – Energy Efficiency – Repeal

Expedited Bill 10-10, Buildings – Energy Efficiency – Repeal, sponsored by the Council President at the request of the County Executive, was introduced on March 23, 2010. A Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for April 28 at 2:00 p.m.

Bill 10-10 would repeal the requirement that certain residential buildings meet certain ENERGY STAR standards; and generally amend the law relating to buildings, energy, and environmental policy.

This packet contains:

Expedited Bill 10-10
Legislative Request Report
Memorandum from County Executive

Circle

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Expedited Bill No. 10-10
Concerning: Buildings – Energy
Efficiency - Repeal
Revised: 3/19/2010 Draft No. 1
Introduced: March 23, 2010
Expires: September 23, 2011
Enacted: _____
Executive: _____
Effective: April 1, 2010
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) repeal the requirement that certain residential buildings meet certain ENERGY STAR standards; and
- (2) generally amend the law relating to buildings, energy, and environmental policy.

By repealing

Montgomery County Code
Chapter 8, Buildings
Article VIII. Energy Efficiency

2008 Laws of Montgomery County, ch. 7, § 5

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. Article VIII of Chapter 8 is repealed as follows:**

2 **[Article VIII. Energy Efficiency]**

3 **[8-54. Definitions.]**

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

5 “*Covered building*” means a newly constructed:

6 (1) single-family residential building; or

7 (2) multi-family residential building which is:

8 (A) not a covered building under Section 8-48; and

9 (B) eligible to earn the ENERGY STAR rating.

10 “*Department*” means the Department of Permitting Services.

11 “*Director*” means the Director of the Department or the Director’s designee.

12 “*ENERGY STAR rating*” means the ENERGY STAR rating developed by the
13 federal Environmental Protection Agency which measures a building’s energy
14 efficiency.

15 “*Home Energy Rating System*” or “*HERS*” means the energy efficiency rating
16 system for residential buildings developed by RESNET.

17 “*Qualified home energy performance rater*” means an individual who:

18 (1) is certified by RESNET as a home energy performance rater; or

19 (2) meets other equivalent requirements approved by the Director.

20 “*RESNET*” means the Residential Energy Services Network.

21 “*Performance path*” means the process developed by the federal
22 Environmental Protection Agency under which a building may achieve the
23 ENERGY STAR rating if it:

24 (1) achieves the applicable HERS index score; and

25 (2) is verified and field-tested by a qualified home energy
26 performance rater.

27 *“Prescriptive path”* means the process developed by the federal Environmental
28 Protection Agency under which a building may achieve the ENERGY STAR
29 rating if it:

- 30 (1) complies with the applicable ENERGY STAR Builder Option
- 31 Package; and
- 32 (2) is verified and field-tested by a qualified home energy
- 33 performance rater.]

34 **[8-55. ENERGY STAR standard.]**

35 [A covered building must achieve the ENERGY STAR rating under the
36 performance or prescriptive path.]

37 **[8-56. Building permits; use and occupancy certificates.]**

38 [(a) Design plans. An applicant for a building permit for a covered building
39 must submit to the Department:

- 40 (1) design plans for the building that are likely to achieve the
- 41 standard under Section 8-55, as certified by a qualified
- 42 home energy performance rater; and
- 43 (2) any other document or information the Department finds
- 44 necessary to decide whether the building will achieve the
- 45 standard under Section 8-55.

46 (b) Building permit. The Department must require compliance with
47 Section 8-55 as a condition of any building permit issued for a
48 covered building.

49 (c) Final use and occupancy certificate. The Department must not
50 issue a final use and occupancy certificate for a covered building,
51 if a use and occupancy certificate is otherwise required, unless it
52 finds that the building complies with Section 8-55.]

53 **[8-57. Regulations.]**

[The County Executive must adopt regulations under Method (2) to administer this Article. Those regulations must specify:

- (a) any process for becoming a qualified home energy performance rater that the Director finds is equivalent to the RESNET certification process;
- (b) any standards and procedures under which the Director may approve full or partial waivers of Section 8-55 when compliance would be impractical or unduly burdensome and the waiver would serve the public interest; and
- (c) standards and procedures for any enforcement mechanism that the Department finds necessary to accomplish the purposes of this Article.]

Sec. 2. Section 5 of Chapter 7 of the 2008 Laws of Montgomery County, as amended by Section 1 of Chapter 32 of the 2009 Laws of Montgomery County, is repealed as follows:

- [(a) Section 8-55, as added by Section 4 of this Act, applies to any covered building for which a building permit application is filed on or after April 1, 2010.
- (b) By October 1, 2009, the County Executive must adopt, and submit to the Council under County Code Section 2A-15, regulations required by Section 8-57, as added by Section 4 of this Act.]

Sec. 3. Expedited Effective Date. The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on April 1, 2010.

LEGISLATIVE REQUEST REPORT

Expedited Bill 10-10

Buildings—Energy Efficiency—Repeal

DESCRIPTION:	Repeals the requirement that certain residential buildings meet ENERGY STAR standards.
PROBLEM:	Bill 30-07, Buildings – Energy Efficiency required “covered buildings” to meet the Energy Star standard for energy efficiency. In this context, covered buildings include (1) all single family homes; and (2) multi-family buildings that are eligible for the Energy Star rating and not covered by the County’s Green Buildings Law. Bill 44-09, Buildings – Energy Efficiency – Deferral deferred the effective date of these provisions to April 1, 2010. Bill 30-07 included language that authorized the Department of Environmental Protection (DEP) to “suspend” the applicability of the Energy Star standard until April 1, 2010 if DEP found an alternative standard that: (1) achieved the same energy efficiency goals; and (2) was less costly to builders and buyers of covered buildings. Following a comprehensive analysis of a number of alternative standards, DEP concluded that the 2009 International Energy Conservation Code (IECC 2009), with a local modification that would require a blower door test as a method of verifying compliance, would result in building energy performance that was comparable to the Energy Star standard. Maryland adopted IECC 2009 as the State energy code (effective January 1, 2010) and mandated that all local jurisdictions adopt this code by June 1, 2010. As adopted by the International Code Council (ICC), IECC 2009 includes two paths for verification – a blower door test or visual inspection of various components of a building’s air barrier and insulation. This bill recognizes that the ICC’s consensus-based code development process determined that IECC 2009 will achieve the same energy performance regardless of the verification option selected by the builder.
GOALS AND OBJECTIVES:	To repeal the ENERGY STAR mandate that applies to single-family homes and certain other residential buildings.
COORDINATION:	Department of Permitting Services
FISCAL IMPACT:	Completed.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	
SOURCE OF INFORMATION:	Hadi Mansouri, Chief, Division of Building Construction, DPS Stan Edwards, Chief, Compliance Division, DEP
APPLICATION WITHIN MUNICIPALITIES:	To be determined.
PENALTIES:	Class A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 16, 2010

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 MAR 18 AM 9:53

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation to Repeal the Energy Star Standard for Covered Buildings

I am forwarding to Council for introduction an Expedited Bill that would repeal provisions of the County Code which were added by Bill 30-07, Buildings – Energy Efficiency that require “covered buildings” to meet the Energy Star standard for energy efficiency. In this context, covered buildings include: (1) single family homes; and (2) multi-family buildings that are eligible for the Energy Star rating and not covered by the County’s Green Buildings Law (i.e., buildings that are three stories or less). I am also forwarding a Legislative Request Report for this bill.

Bill 30-07 made the Energy Star standard applicable to any covered building for which a building permit application is filed on or after January 1, 2010. Bill 44-09, Buildings – Energy Efficiency – Deferral (which the Council passed on December 10, 2009) deferred the applicability of the bill to building permit applications filed on or after April 1, 2010.

Bill 30-07 included language that authorized the Department of Environmental Protection (DEP) to “suspend” the applicability of the Energy Star standard until April 1, 2010 if DEP found an alternative standard that: (1) achieved the same energy efficiency goals; and (2) was less costly to builders and buyers of covered buildings. Following a comprehensive analysis of a number of alternative standards, DEP concluded that the 2009 International Energy Conservation Code (IECC 2009), with a local modification that would require a blower door test as a method of verifying compliance, would result in building energy performance that was comparable to the Energy Star standard. The blower door test is projected to cost \$200-\$400 for the average sized home.

Maryland adopted IECC 2009 as the State energy code (effective January 1, 2010) and mandated that all local jurisdictions adopt this code by June 1, 2010. As adopted by the International Code Council (ICC), IECC 2009 includes two paths for verification – a blower door test or visual inspection of various components of a building’s air barrier and insulation. Based on discussions with the Department of Permitting Services (DPS) and DEP, I am convinced that IECC 2009 will achieve the energy efficiency goals of Bill 37-07 regardless of

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the verification option selected by the builder. Recognizing that the ICC's consensus-based code development process includes representatives from across the construction industry, including code regulators and industry representatives, I am reluctant to specify one verification method is more effective than the other. In addition, mandating a blower door test would increase the cost of constructing a new home by \$200-\$400 (or more if multiple tests were required), something I do not recommend given the current state of the construction industry.

Representatives of DPS can provide more information to Council on IECC 2009, and the processes used by builders and DPS to ensure that buildings comply with applicable energy codes. In addition, it would be appropriate for DPS and DEP to update the Council periodically on the status of changes to building codes like IECC, as well as voluntary standards like Energy Star. Significant changes to codes and standards are likely in the years ahead due to increased interest in improving the energy efficiency of all buildings, and the development of new energy related technologies and practices.

Attachments

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Carla Reid, Director, Department of Permitting Services
Robert Hoyt, Director, Department of Permitting Services