



Committee: Joint
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #GreenBank; #FuelEnergyTax

AGENDA ITEM #9
December 7, 2021
Public Hearing

SUBJECT

Bill 44-21, Montgomery County Green Bank – Funding – Fuel Energy Tax Revenue

Lead Sponsor: Council President Hucker and Councilmember Friedson

Co-Sponsors: Council Vice-President Albornoz and Councilmembers Riemer, Navarro, Katz, Rice and Jawando

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To receive testimony – no vote expected

DESCRIPTION/ISSUE

- How would dedicating a portion of the fuel-energy tax to the Green Bank affect other priorities?

SUMMARY OF KEY DISCUSSION POINTS

- What would the dedicated revenue buy the County?

This report contains:

Staff Report	Pages 1-2
Bill 44-21	© 1
LRR	© 5
County Attorney Bill Review	© 6
Fiscal Impact Statement	© 8

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MEMORANDUM

December 2, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 44-21, Montgomery County Green Bank – Funding – Fuel Tax Revenue

PURPOSE: Public Hearing – No Council vote required

Bill 44-21, Montgomery County Green Bank – Funding – Fuel Tax Revenue, with Lead Sponsors Council President Hucker and Councilmember Friedson, and Co-Sponsors Council Vice-President Albornoz and Councilmembers Riemer, Navarro, Katz, Rice and Jawando, was introduced on November 16, 2021. A public hearing is scheduled for December 7, 2021 at 1:30 p.m.¹ A joint Government Operations & Fiscal Policy and Transportation and Environment Committee worksession is tentatively scheduled for December 14, 2021.

Background

The Montgomery County Green Bank was established by Bill 18-15, enacted by the Council on June 30, 2015 and signed into law by the Executive on July 7, 2015. The Green Bank promotes the investment in clean energy technologies in the County by offering financing structures to lower the cost of financing these technologies for County residential and commercial properties. The fuel-energy tax is levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County. The Council budgeted \$175,651,251 for energy tax revenue in FY22.

Bill 44-21 would mandate that the Council appropriate 10% of the fuel-energy tax revenue to the County Green Bank each year in the annual operating budget. The County Attorney's Office (OCA) found no legal issues with the Bill ©5. As OCA pointed out, even if this Bill is enacted, the Council can change the amount dedicated to the Green Bank for a specific year when adopting the operating budget. OMB estimated that the Bill would reduce revenue for the General Fund by \$17.6 million each year (©8). This reduction in the General Fund would need to be made up by either reducing expenditures on other programs or increasing revenues.

¹#GreenBank; #FuelEnergyTax

This packet contains:

Expedited Bill 44-21
Legislative Request Report
County Attorney Bill Review
Fiscal Impact Statement

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F:\LAW\BILLS\2144 Green Bank - Fuel-energy tax - funding\PH Memo.Docx

Bill No. 44-21
Concerning: Montgomery County Green Bank – Funding – Fuel-energy tax revenue
Revised: 11-16-21 Draft No. 2
Introduced: November 16, 2021
Expires: May 16, 2023
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Council President Hucker and Councilmember Friedson
Co-Sponsors: Councilmembers Riemer, Navarro, and Katz, Council Vice President Albornoz,
Councilmembers Rice and Jawando

AN ACT to:

- (1) require the Council to annually appropriate 10% of the fuel-energy tax revenue to the County Green Bank;
- (2) establish a dedicated County funding source for the Green Bank; and
- (3) generally amend the law governing the Green Bank and the use of the fuel-energy tax revenue.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Section 18A-49

Chapter 52, Taxation
Section 52-14

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-49 and 52-14 are amended as follows:**

2 **18A-49. Work program; staff; support from County Government.**

- 3 (a) The Board of Directors must adopt a work program each year to advance
4 the policy objectives and perform the activities listed in Section 18A-44.
- 5 (b) The Green Bank’s work program may include a plan for sponsorship of
6 private investment, marketing, and advocacy initiatives.
- 7 (c) The Board must meet with the Executive and the Council at least semi-
8 annually.
- 9 (d) The Department of Environmental Protection may, if the Board of
10 Directors requests, provide incidental administrative support for the
11 Green Bank, including contracts, grants, or services in kind, subject to
12 appropriation.
- 13 (e) Funding sources for the Green Bank may include:
- 14 (1) federal[,] or State[, or County] funds provided to it;
- 15 (2) County funds, including a portion of the fuel-energy tax revenue
16 received by the County;
- 17 (3) charitable gifts, grants, or contributions and loans from
18 individuals, corporations, university endowments, and
19 philanthropic foundations; and
- 20 [(3)] (4) earnings and interest derived from financing support
21 activities for clean energy technologies backed by the Green Bank.

22 The Green Bank may also raise private funds and may accept services from any
23 source consistent with its purpose.

24 **52-14. Fuel-energy tax.**

- 25 (a) (1) A tax is levied and imposed on every person transmitting,
26 distributing, manufacturing, producing, or supplying electricity,
27 gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.

- 28 (2) The County Council must set the rates for various forms of fuel
29 and energy by a resolution adopted under Section 52-17(c). The
30 Council may, from time to time, revise, amend, increase, or
31 decrease the rates, including setting different rates for fuel or
32 energy delivered for different categories of final consumption,
33 such as residential or agricultural use. Each rate must be based on
34 a weight or other unit of measure regularly used in the conduct of
35 business. The rate for each form of fuel or energy should impose
36 an equal or substantially equal tax on the equivalent energy content
37 of each form of fuel or energy for a particular category of use.
- 38 (3) The tax does not apply to the transmission or distribution of
39 electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in
40 interstate commerce through the County if the tax would exceed
41 the taxing power of the County under the United States
42 Constitution. The tax does not apply to fuel or energy converted to
43 another form of energy that will be subject to a tax under this
44 Section. The tax must not be imposed at more than one point in the
45 transmission, distribution, manufacture, production, or supply
46 system. The rates of tax apply to the quantities measured at the
47 point of delivery for final consumption in the County. For an
48 electric company (as defined in state law), the rates of tax apply to
49 the net consumption that is used to calculate each consumer bill.
- 50 (4) The tax does not apply to energy that is generated from a
51 renewable source located:
- 52 (A) in the County and either used on the site where it is
53 generated or subject to a net energy metering agreement (as
54 defined in state law) with a public utility; or

55 (B) in the same electric service territory in Maryland as the
56 subscriber using the energy and subject to a virtual net
57 energy metering agreement (as defined in state law) with a
58 public utility.

59 Renewable source means a “Tier 1 renewable source” as defined in
60 Section 7-701(l) of the Public Utilities Article of the Maryland Code or
61 any successor provision.

62 * * *

63 (i) Any violation of this Section is a class A violation. Each violation is a
64 separate offense. Any conviction does not relieve any person from paying
65 any tax due.

66 (j) The Council must appropriate 10% of the revenue received by the County
67 from the fuel-energy tax each year to the nonprofit corporation designated
68 as the Montgomery County Green Bank under Section 18A-46.

69 **Sec. 2. Effective date.**

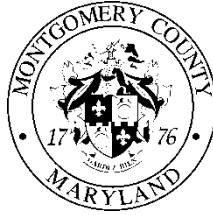
70 The amendments in Section 1 take effect on July 1, 2022.

LEGISLATIVE REQUEST REPORT

Bill 44-21

Montgomery County Green Bank – Funding – Fuel Energy Tax Revenue

DESCRIPTION:	Bill 44-21 would mandate that the Council appropriate 10% of the fuel-energy tax revenue to the County Green Bank each year in the annual operating budget.
PROBLEM:	The County Green Bank does not have a dedicated source of revenue.
GOALS AND OBJECTIVES:	To mandate a dedicated source of revenue for the Green Bank.
COORDINATION:	Finance, DEP
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney (240) 777-7895
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not applicable.



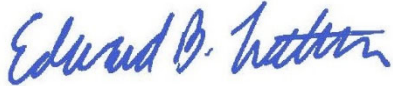
OFFICE OF THE COUNTY ATTORNEY


Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Adriana Hochberg
Acting Director, Department of Environmental Protection

VIA: Edward B. Lattner, Chief
Division of Government Operations 

FROM: Taggart B. Hutchinson
Associate County Attorney 

DATE: December 1, 2021

RE: Bill No. 44-21, Montgomery County Green Bank – Funding – Fuel-Energy tax revenue

Summary:

Council Bill 44-21 would establish a dedicated County funding source for the Montgomery County Green Bank (the “Green Bank”) by requiring the Council to appropriate and dedicate 10% of the County’s fuel-energy Tax to the Green Bank.

Legal Implications:

The bill as drafted has no legal issues. If the bill is enacted, and the Council desires to amend the Green Bank’s dedicated ratio of the annual fuel-energy tax revenue at a later date, a subsequent budget resolution would prevail over Council Bill 44-21. See *Haub v. Montgomery Cnty.*, 353 Md. 448 (1999) (Montgomery County budget treated as enacted legislation).

If you have any questions concerning this memorandum, please call me.

tbh

cc: Stan Edwards, Division of Energy, Climate, and Compliance
Lindsay Shaw, Manager, Department of Environmental Protection
Mike Coveyou, Director of Finance

Bill 44-21
December 1, 2021
Page 2

Marc Hansen, County Attorney
Bob Drummer, Senior Legislative Attorney
Ken Hartman, Director of the Strategic Partnerships

Fiscal Impact Statement
Bill 44-21, Montgomery County Green Bank - Funding - Fuel Energy Tax Revenue

1. Legislative Summary.

Bill 44-21 would mandate the County Council to appropriate 10 percent of the Fuel Energy Tax revenue to the Montgomery County Green Bank (MCGB) each year in the annual operating budget.

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 44-21 would not directly result in additional revenues. Funds provided to the MCGB would be used to support the development of energy efficiency, renewable energy, and other climate related projects—primarily on buildings in the County. These projects could ultimately result in increased property tax revenues due to higher valued properties, but it would be difficult to predict the timing and magnitude of this factor.

Bill 44-21 diverts Fuel Energy Tax revenue that is currently used to support general government operations to the MCGB, creating a funding “gap” that would not exist in the absence of the Bill. According to the introductory packet for the Bill, the budgeted FY22 Fuel Energy Tax revenue was \$175.6 million, meaning the estimated funding gap in the General Fund would be \$17.6 million in FY23 assuming the same level of Fuel Energy Tax revenues. By diverting \$17.6 million in Energy Tax revenue to the MCGB, General Fund supported budgets would need to be decreased by an equal amount (assuming no other changes to other General Fund revenues).

As a point of reference, from FY18-FY21 the Fuel Energy tax averaged approximately \$190 million annually, whereby, the 10 percent would be close to \$19 million.

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

Fiscal Year	2023	2024	2025	2026	2027	2028	6-Year Total
Revenue	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$17,600,000	\$17,600,000	\$17,600,000	\$17,600,000	\$17,600,000	\$17,600,000	\$105,600,000

**This chart shows the MCGB additional spending due to \$17.6 million tax revenue diverted from the General Fund.*

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

This legislation does not affect retiree pensions or group insurance costs.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

This legislation would not result in any IT-related expenditures.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

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

This legislation would provide funding to the Montgomery County Green Bank and would not require any Montgomery County staff time to implement.

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

Not applicable.

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

As drafted, Bill 44-21 would require the full amount of the allocation of funding to the MCGB to occur as part of the annual operating budget approval process.

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

Revenue collected as a result of the Fuel Energy Tax, and therefore, the amount that would be appropriated to the MCGB, depends on two variables. First, the County Council sets the Fuel Energy Tax rates by fuel type and energy source, unless the rates do not change, in which case, the most recently adopted rate resolution remains in effect. Second, the tax collected is based on the amount of fuel (e.g., therms of natural gas, gallons of heating oil) or energy (kWh of electricity) consumed.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

The amount of fuel or energy consumed varies from year to year, and is affected by weather, fuel prices, level of economic activity, and other factors which are difficult to predict.

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

Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

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

Stan Edwards, Department of Environmental Protection
Derrick Harrigan, Office of Management and Budget



Jennifer R. Bryant, Director
Office of Management and Budget

12/1/21

Date