Bill No. 2-14
Concerning: Environmental Sustainability – Buildings – Benchmarking
Revised: 4/22/2014 Draft No. 6
Introduced: January 28, 2014
Enacted: April 22, 2014
Executive: May 1, 2014
Effective: July 31, 2014
Sunset Date: None
Ch. 6, Laws of Mont. Co. 2014

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

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

AN ACT to:

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

By adding
Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-34, 18A-35, 18A-36, and 18A-37
Article 6
Sections **[[**18A-38, 18A-37,**]]** 18A-38, 18A-39, 18A-40, 18A-41, 18A-42, and 18A-43
[[Article 7
Sections 18A-44, 18A-45, 18A-46, 18A-47, 18A-48, 18A-49, and 18A-50**]]**

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

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

Sec. 1. Chapter 18A is amended by [[adding]] amending Article 5 to add Sections 18A-34, 18A-35, 18A-36, and 18A-37; Article 6, consisting of Sections 18A-38, 18A-39, 18A-40, 18A-41, 18A-42, and 18A-43[[; and Article 7, consisting of Sections 18A-44, 18A-45, 18A-46, 18A-47, 18A-48, 18A-49, and 18A-50]] as follows:

Article 5. Commercial Property Assessed Clean Energy Program.

18A-34 – 18A-37. Reserved.

Article 6. Building Energy Use Benchmarking.

18A-38. Definitions.

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

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

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

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

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

Covered building means any [[building owned by the]] County building, Group 1 covered building, or Group 2 covered building[[, as defined in this

Article]]. *Covered building* does not include any building with more than 10% occupancy which is used for

(1) public assembly in a building without walls;

(2) warehousing;

(3) self storage; or

(4) a use classified as manufacturing and industrial or transportation, communication, and utilities.

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

Department means the Department of [[Permitting Services]] Environmental Protection.

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

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

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

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

Group 2 covered building means any nonresidential building, or any group of nonresidential buildings that have the same property identification

number, not owned by the County that equals or exceeds 50,000 square feet gross floor area but is less than 250,000 square feet gross floor area, as identified by the Director.

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

[[(a)]] (1) basement or attic area with a headroom less than 7 feet 6 inches;

[[(b)]] (2) area devoted to unenclosed mechanical, heating, air conditioning, or ventilating equipment;

[[(c)]] (3) parking structure; or

[[(d)]] (4) accessory structure to a residential building.

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

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

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

18A-39. Energy use benchmarking.

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

(b) *Group 1 covered buildings.* No later than [[June 1, 2014]] December 1, 2016, and every [[June]] December 1 thereafter, the owner of any Group 1 covered building must benchmark the building for the previous calendar year. [[However, the owner of any Group 1 covered building with at least 10% residential occupancy, as measured by square footage, must benchmark the building for the previous calendar year no later than June 1, 2015, and no later than June 1st each year thereafter.]] The owner must report the benchmarking information to the Department no later than [[July]] January 1 each year.

[[(b)]] (c) *Group 2 covered buildings.* No later than [[June 1, 2015]] December 1, 2017, and [[no later than June 1st each year]] every December 1 thereafter, the owner of any Group 2 covered building must benchmark the building for the previous calendar year. [[However, the owner of any Group 2 covered building with 10% or more residential occupancy must benchmark the building for the previous calendar year no later than June 1, 2016, and no later than June 1st each year thereafter.]] The owner must report the benchmarking information to the Department no later than [[July]] January 1 each year.

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

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

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

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

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

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

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

18A-40. Data Verification.

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

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

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

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

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

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

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

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

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

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

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

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

(1) summary statistics on the most recent reported energy benchmarking information; [[and]]

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

(3) for County buildings:

(A) the scores of County buildings benchmarked; and

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

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

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

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

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

18A-43. Regulations; penalties.

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

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

[[Article 7. Energy Audits and Retro-Commissioning of Base Building Systems.]]

[[18A-44. Definitions.

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

ASHRAE means the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc.

Base building system means each system or subsystem of a building that uses energy or impacts energy consumption, including:

(1) the building envelope;

(2) any heating, ventilating, and air conditioning (HVAC) system;

(3) any conveying system;

(4) any domestic hot water system; and

(5) any electrical or lighting system.

Base Building system does not include any industrial process that occurs in a covered building or any system or subsystem owned by a tenant (other than a net lessee for a term of 49 years or more, including any renewal option), condominium unit owner, or cooperative unit shareholder, or a system or subsystem for which a tenant bears full maintenance responsibility and that is located in the tenant's leased space or exclusively serves that leased space.

Building management system means a computer-based system that monitors and controls a building's mechanical and electrical equipment, such as its HVAC, lighting, power, fire, and security system, including, at least, control of the heating equipment using interior temperature sensors.

County building means a covered building that is owned by the County and for which the County regularly pays all or part of the energy bills.

Covered building means

(1) 1 building that exceeds 50,000 gross square feet;

(2) 2 or more buildings on the same tax identification number that together exceed 100,000 gross square feet; or

(3) 2 or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet.

Covered building does not include any 1, 2, or 3-family residential building.

Current facility requirements means the owner's current operational needs and requirements for a building, including temperature and humidity set points, operating hours, filtration, and any integrated requirements such as controls, warranty review, and service contract review.

Department means the Department of Environmental Protection.

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

Energy audit or *audit* means a systematic process to identify and develop improvements to any base building system, including any alteration of that system and the installation of new equipment, insulation, or other generally recognized energy efficiency technology to optimize energy performance of the building and achieve energy savings.

Energy auditor means an individual the Department authorizes to perform energy audits and certify audit reports required by this Article.

Energy management system means a system incorporating interior temperature sensors and a central processing unit and controls, which are used to monitor and control electricity, gas, steam, and oil usage, as applicable, based on the need for heating.

Energy efficiency report means the report required under Section 18A-47.

Financial hardship of a building means a building that:

(1) was included on the Department of Finance's tax lien sale list within 2 years before an energy efficiency report was due; or

(2) is exempt from real property taxes under Maryland Code, Tax-Property Article, Sections 7-201, 7-202, and 7-204, or any successor provisions, and had negative revenue less expenses during the 2 tax years before an energy efficiency report was due.

Green Building Council means the U.S. Green Building Council, an organization that has developed and published the LEED rating system to measure the energy and environmental performance of a building.

LEED refers to the series of Leadership in Energy and Environmental Design (LEED) rating systems developed by the Green Building Council.

Owner means:

(1) the owner of record of a covered building;

(2) the net lessee in the case of a net lease of an entire building for a term of 49 years or more, including any renewal option;

(3) the board of directors or similar body if the covered building is a cooperative apartment or condominium corporation.

Registered design professional has the meaning in the latest version of the ICC International Building Code or another building code that the County adopts.

Retro-commissioning means a systematic process applied to an existing building that has never been commissioned to assure that the building's systems are designed, installed, functionally tested, and can be operated and maintained according to the owner's operational needs.

Simple payback means the number of years for projected annual energy savings to equal the amount invested in an energy conservation measure, as determined by dividing the investment by the annual energy savings.

Space means an area in a building enclosed by floor to ceiling walls, partitions, windows and doors.]]

[[**18A-45. Energy audits required.**

(a) *Audit required.* The owner must assure that an energy audit is performed on the base building systems of a covered building before filing an energy efficiency report required by this Article. Except as otherwise provided in Section 18A-49, an energy audit must be performed by or under the supervision of an energy auditor and must be performed in accordance with applicable regulations. The audit process must cover the base building system and must at least identify:

(1) any reasonable measure, including any capital improvement, that would reduce energy use or the cost of operating the

building;

(2) for each measure, the associated annual energy savings, the cost to implement, and the simple payback, calculated by a method approved by the Department;

(3) the building's benchmarking output consistent with the United States Environmental Protection Administration Portfolio Manager tool or another method the Director finds equivalent;

(4) a break-down of energy usage by system and predicted energy savings by system after any proposed measures are implemented; and

(5) a general assessment of how the major energy consuming equipment and systems used in tenant spaces impact the energy consumption of the base building systems, based on a representative sample of spaces.

(b) *Audit process.* The energy audit process must be at least as stringent as the Level II Energy Survey and Engineering Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by the ASHRAE, or another process the Director finds equivalent.

(c) *Qualifications of auditor.* An energy auditor must be a registered design professional with any other certification or qualification the Director finds appropriate.

(d) *Contents of audit report.* The energy auditor must prepare and certify a report of the energy audit. Except as otherwise provided in Section 18A-49, the audit report must include information relating to the audit as required by applicable regulations, including the date when the audit was completed and the information required by subsection (a).

(e) *Compliance with landmarks laws.* The cost estimates for any covered building that is regulated by any state or federal law regulating landmarks or historic buildings must include all added costs necessary for the proposed work to comply with that law.

(f) *Timing of energy audit.* Except as otherwise provided in Section 18A-49, the energy audit must be completed no earlier than 4 years before the date when a covered building's energy efficiency report is filed under this Article.

(g) *Exceptions.* An energy audit is not required if a registered design professional certifies that the building complies with any of the following requirements:

(1) The covered building received an EPA Energy Star label for at least 2 of the 3 years before the building's energy efficiency report is filed.

(2) No EPA Energy Star rating is available for the building type, and a registered design professional documents that the building's energy performance is 25 or more points better than the performance of an average building of its type over a 2-year period during the 3 years before an energy efficiency report is filed, consistent with the methodology of the Leadership in Energy and Environmental Design 2009 rating system for Existing Buildings published by the United States Green Building Council or other rating system or methodology for existing buildings, as determined by the Department.

(3) The covered building received certification under the LEED 2009 rating system for Existing Buildings, or another rating system for existing buildings the Director finds equivalent,

within 4 years before the building's energy efficiency report is filed.]]

[[**18A-46. Retro-commissioning required.**

(a) *Retro-commissioning required.* The owner of a covered building must assure that retro-commissioning is performed on the base building system of a covered building before filing an energy efficiency report as required by this Article. Except as otherwise provided in Section 18A-49, retro-commissioning must be performed by or under the supervision of a retro-commissioning agent, as required by applicable regulations issued under subsection (b).

(b) *Regulations.* The County Executive must issue regulations requiring that sufficient analysis, corrections and testing have been done so that each base building system demonstrates efficient operation.

(c) *Contents of retro-commissioning report.* The retro-commissioning agent must prepare and certify a retro-commissioning report. Each retro-commissioning report must include information relating to the retro-commissioning as specified in applicable regulations.

(d) *Timing of retro-commissioning* Except as otherwise provided in Section 18A-49, each retro-commissioning must be completed no earlier than 4 years before a covered building's energy efficiency report is filed with the Department under this Article.

(e) *Documentation of retro-commissioning.* The owner must maintain a copy of the latest up-to-date equipment manual and the most recent retro-commissioning report at every covered building and must make either available to the Department for inspection on request.

(f) *Exceptions.* A retro-commissioning is not required if the covered building received certification under the LEED 2009 rating system for

Existing Buildings, or another rating system for existing buildings the Department finds equivalent, within 2 years before the building's energy efficiency report is filed and earned the LEED point for Existing Building Commissioning investigation and analysis and the LEED point for Existing Building Commissioning implementation.]]

[[**18A-47. Energy efficiency report required.**

(a) *Report required.* Except as provided in Section 18A-49, the owner of each covered building must file an energy efficiency report for the building during the calendar year when the report is due under this Section and every tenth calendar year thereafter.

(b) *Content of report.* Except as otherwise provided in Section 18A-49, each energy efficiency report must include, in a format approved by the Department:

(1) the building's energy audit report or documentation that an exception applies to the building; and

(2) the building's retro-commissioning report or documentation that an exception applies to the building.

(c) *Due dates.* The first energy efficiency report for each covered building in existence on July 1, 2014, and for each new building must be due, beginning with calendar year 2015, in the calendar year with a final digit that is the same as the last digit of the building's property identification number, as illustrated in the following chart:

Last digit of property ID	0	1	2	3	4	5	6	7	8	9

number										
Year first EER is due	2020	2021	2022	2023	2024	2015	2016	2017	2018	2019

(d) *Deferral of energy efficiency report.* An owner of a covered building may defer submitting an energy efficiency report for a covered building until the tenth year after the year identified in subsection (c) if the building:

(1) is less than 10 years old at the beginning of its first assigned calendar year; or

(2) has undergone substantial rehabilitation, as certified by a registered design professional, within 10 years before the calendar year when an energy efficiency report is due, if at the beginning of the calendar year the base building systems of the building comply with County law in effect for new buildings constructed on and after July 1, 2010 or in effect on the date of the substantial rehabilitation, whichever is later.

(e) *Exceptions.*

(1) The Director may allow an extension of time to file an energy efficiency report if the building's owner shows that, despite the owner's good faith efforts, the owner could not complete the required energy audit and retro-commissioning before the due date for the report. The Director may allow no more than 2 extensions of no more than one year each. Any extension allowed under this Section must not extend the scheduled due dates for any later energy efficiency report.

(2) The Director may allow one or more annual extensions of time to file an energy efficiency report because of financial hardship of the building.

(f) *Due dates for County buildings.* The first due dates for County buildings must follow a staggered schedule, from calendar year 2015 through calendar year 2023, for each building in use on July 1, 2014. The Director must add each County building opened to use after that date to the schedule within 10 years after the Department of Permitting Services issues the certificate of use and occupancy for the building.

(g) *Combined audit and retro-commissioning.* An owner may perform the audit and retro-commissioning of a building in a combined process if that process meets all requirements of Sections 18A-45 and 18A-46.]]

[[18A-48. Notice.

The Department must notify the owner of each covered building of the requirements of this Article no later than 3 years before the calendar year when the covered building's energy efficiency report is due and in the calendar year before the calendar year when the report is due.]]

[[18A-49. Early compliance.

The Department may allow an owner of a covered building to comply with this Article before the deadline specified in Section 18A-47.]]

[[18A-50. Regulations; penalties.

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

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

Sec. 2. Benchmarking Work Group.

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

(b) The Work Group must:

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

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

Approved:

Craig L. Rice, President, County Council — 4/23/14 Date

Approved:

Isiah Leggett, County Executive — May 1, 2014 Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council — 5/2/14 Date