



# THE PRINCE GEORGE'S COUNTY GOVERNMENT

## Office of Audits and Investigations

June 22, 2022

### MEMORANDUM

TO: Robert J. Williams, Jr.  
Council Administrator

William M. Hunt  
Deputy Council Administrator

THRU: Josh Hamlin   
Director of Budget and Policy Analysis

FROM: Alex Hirtle   
Legislative Budget and Policy Analyst

Policy Analysis and Fiscal Impact Statement  
CB-026-2022 Environmental Sustainability, Building Energy Use Benchmarking and  
Performance Standards (DR-1)

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**CB-026-2022** (*proposed by: Council Members Taveras*)

Assigned to Transportation, Infrastructure, Energy, and Environment Committee (TIEE)

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AN ACT CONCERNING ENVIRONMENTAL SUSTAINABILITY BUILDING ENERGY USE BENCHMARKING AND PERFORMANCE STANDARDS for the purpose of stating legislative intent; providing certain definitions; providing for the applicability of this Division; providing for energy use benchmarking; establishing building energy performance standards; providing for data verification, providing for solicitation of compliance information from tenants; establishing a Building Performance Improvement Board; providing for certain building performance improvement plans; providing for extensions and adjustments; providing for an annual report; providing for certain disclosures of benchmarking and energy performance information; providing for regulations; providing for penalties, providing for enforcement; providing for disclosure of covered building benchmarking and performance standards information for certain contracts for sale; establishing a Benchmarking Work Group; and generally regarding building energy use benchmarking and performance standards.

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### **Fiscal Summary**

#### **Direct Impact:**

*Expenditures:* Significant additional expenditures required.

*Revenues:* Possible modest increase in revenue from fines.

#### **Indirect Impact:**

Notably positive.

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### **Legislative Summary**

CB-026-2022, proposed by Council Member Taveras, and sponsored by Council Members Dernoga and Glaros, was presented and introduced on April 26, 2022, and referred to the Transportation, Infrastructure, Energy and Environment Committee (TIEE). This legislation would: (1) require certain buildings to be “benchmarked,” or have data tracked on energy use; (2) engage the commercial and multi-family residential building sector in adopting energy conservation and efficiency opportunities; and (3) provide for new opportunities for local businesses that provide energy conservation and efficiency services.

Draft 1 of the Bill may conflict with the recently enacted State of Maryland Climate Solutions Now Act of 2022.<sup>1</sup> The State legislation provides requirements for reduction in greenhouse gasses, and includes provisions for emission reductions for certain buildings, and for the State Department of the Environment to establish building energy performance standards for certain buildings by June 1<sup>st</sup>, 2023.<sup>2</sup> *Given the question of the County’s authority to legislate in areas covered by State legislation on building energy performance, Council Member Taveras may submit a proposed Draft 2 for discussion before the TIEE Committee.*

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### **Current Law/Background**

The County currently does not require benchmarking of buildings of any kind. However, CB-083-2013 requires the County to install clean renewable energy technology in newly constructed or major renovations of public buildings, reducing the greenhouse emissions of such structures. The County also created a policy paper in 2014 called the Smart Energy Communities Policy, which states objectives including reducing conventional electricity generation by supplementing renewable energy and reducing greenhouse gas emissions within County operations.

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<sup>1</sup> <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/sb0528>

<sup>2</sup> SB 528 (2022), page 1, lines 6-7; State Subtitle 16 (2-1602, recent edits)

## **Resource Personnel**

Jobina Brown, Staff to Council Member Taveras

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## **Discussion/Policy Analysis**

### *Specific Provisions of CB-026-2022 (DR-1):*

Section 2-508.04 designates the categories of buildings that require benchmarking, and the dates that benchmarking must begin, including: County-owned covered buildings from 10,000-50,000+ square feet; Group 1 covered buildings, private non-residential buildings equal to or over 250,000 square feet; Group 2 covered buildings, private non-residential buildings equal or greater than 50,000 square feet, but less than 250,000 square feet; Group 3 buildings, private non-residential buildings that equals or exceeds 10,000 square feet, but less than 50,000 square feet; Group 4 covered buildings, private multifamily residential or mixed-use covered buildings equal to or exceeding 250,000 square feet; Group 5 buildings, private multifamily residential or mixed-use covered buildings equal to or exceeding 10,000 square feet, but less than 250,000 square feet. This section provides the dates that each group of buildings must begin to be benchmarked, which is done monthly for at least a one-year period. Data will be reported to the Department of the Environment (DOE).

The legislation also designates newly constructed buildings to begin benchmarking once the facility is occupied and data can be collected. Waivers are provided for business owners of financially distressed buildings, court-controlled or foreclosed buildings, unoccupied buildings, the building receiving its use-and-occupancy certificate during the benchmarking calendar year or demolished or to be demolished buildings.

Building owners must have their data verified by a recognized data verifier and can be asked for a verified statement if requested by the DOE Director. Building owners with an ENERGY STAR Certification may be waived for verification.

Section 2-508.06 provides for solicitation of information from tenants. This includes all information that a building owner cannot acquire to comply with the legislation. Non-compliance of the request by the tenant requires the Director to consider the building owner in compliance with the benchmarking requirements, given all the other available information.

DOE will be required to set the performance standards of each type of building based on Energy Use Intensity (EUI) measurements. This measurement is different for each type of building (for example, retail stores compared to hospitals), and will be utilized for interim and final performance standards. The ultimate goal of the data is to ensure the building's energy efficiency and reduction of greenhouse gas emissions meet the standards set by the department director in the timelines outlined within the legislation. The timelines for meeting the performance standards are outlined in Section 2-508.07 of the legislation, according to the category of the building.

Section 2-508.08 provides for the County Executive to appoint members to a Building Performance Improvement Board, consisting of 19 voting members. Members include representatives from local utilities, energy providers, green jobs, building managers, non-profits, and other representatives. The Board must advise DOE and provide recommendations for building type groupings, performance standards, technical reviews and approval process, enforcement, and more.

Section 2-508.09 provides for building performance improvement plans for building owners who cannot reasonably meet performance standards due to economic feasibility or other circumstances beyond the owner's control. The owner may submit a proposed building performance improvement plan to be reviewed by the Department and approved by the Director and the Board.

Section 2-508.10 provides for Extensions and Adjustments, and directs the Department, as recommended by the Board, to allow for extensions and adjustments of interim and final performance standards. This may include qualified affordable housing, non-profit buildings, and other buildings. Adjustments and extensions may also be applied to planned demolition buildings, financial distress and other negative financial circumstances confronted by the building owner.

Section 2-508.11 outlines the requirements for annual reports. By October 1<sup>st</sup> of each year, the DOE Director must submit an annual report to the County Executive and County Council on building benchmarking and performance. The report must include information on energy data by building type, energy efficiency trends, cost savings, job creation and carbon footprint reductions. County building performance scores and energy efficiency improvement recommendations must be included. Certain data will be made available to the public; exceptions to public disclosure include state laws, first calendar year benchmark data, national security and other harmful information within public interest.

The County Executive is required to issue regulations to administer the legislation, and the Department may revoke adjustments or extensions if false information is provided by the building owner. A violation of the legislation is a civil penalty of \$1,000 for an initial or repeat offense.

Section 2-508.14 requires disclosure of certain information as it relates to a buyer or a seller of a building. Sellers must disclose if the building is subject to benchmarking requirements, and provide any associated data, including performance baselines, performance standards, and improvement plans. The buyer must indicate in writing that the seller has provided the required information.

Section 2-508.15 establishes a County Executive-appointed Benchmarking Work Group comprised of seven voting members. The members should include building owners and managers, industry trade associations, non-profit organizations, and utility companies. The Work Group must review the implementation of this legislation, including any recommended amendments and report to the County Executive and County Council on a semi-annual basis.

*Discussion:*

This legislation was modeled after Montgomery County's (MD) 16-21 Bill passed in 2021 which expanded the number of buildings covered by benchmarking requirements (Montgomery County was already requiring some buildings to be benchmarked at that time), established energy performance standards for buildings with certain gross floor area, and created a building performance improvement board.

This legislation has similar requirements to the Montgomery County Bill and is assertive in its approach for required buildings to be benchmarked- requirements for benchmarking include County owned buildings, private non-residential buildings, and multi-family or mixed-use buildings as small as 10,000 square feet, whereas Montgomery County's requirements are set at 25,000 square feet as minimally required. Additionally, the legislative timeframe calls for some County buildings to begin benchmarking as soon as June 1, 2023, an attainable date as long as the personnel and technical resources are all in place to begin the benchmarking process.

The legislation provides for the creation of two groups – a Building Performance Improvement Board, which will have 19 voting members, and a Benchmarking Working Group, which will consist of seven voting members. Consideration should be given to the size of each group, and the total needed for a quorum, given the County has been challenged in the past with successfully facilitating fully functioning working groups. An alternative may be to have one group with less than 19 voting members perform the function of both groups as outlined.

Additionally, the proposed legislation does not underscore the need for community outreach and education – will this be performed in part by these two groups, by DOE, the County Executive, or another entity? Partnerships are key, and the County would be wise to create a strong partnership with Prince George's Community College's Sustainable Energy Workforce Development Program to inform the community of benchmarking requirements, train new workings to perform benchmarking and energy efficiency duties, and possibly be a liaison for technical concerns and questions the building owners may have.

Other partnerships may include the Maryland-National Capital Park and Planning Commission (M-NCPPC) and their Planning Department. Given the number of M-NCPPC's buildings in the County, it would be remiss to not include them in this legislation. Additionally, the question of whether municipalities and their associated buildings, both private and public, are included in this plan cannot be ignored. Putting aside the legal aspect of this, the County should engage the Prince George's County Municipal League to become a partner in this legislative initiative and encourage all members to participate in the benchmarking requirements.

The Council should also pursue the provision of solicitation of compliance information from building tenants. This was a subject of discussion during the editing of the legislation, and the legal aspect of this should be clearly defined. If solicitory compliance is indeed not legally required, possibly tenant incentives by the building owner and/or County can be proposed.

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**Fiscal Impact:**

- *Direct Impact*

Enactment of CB-026-2022 will have an adverse fiscal impact on the County through the need for additional personnel and other resources to administer the benchmarking and performance standards requirements the legislation outlines. The need for staff to oversee the program, provide enforcement, perform data analysis and other technical duties, as well as having a building owner liaison and the associated administrative support adds to costs for the County. The Department did not provide specific fiscal numbers for the fiscal impact, but data from Montgomery County’s program indicates that when the phase-in portion of their program will be complete (FY24), the cost for personnel and program operation will be about \$1.2 annually.<sup>3</sup> The County’s own fiscal impact should be less given the inventory of buildings, notably commercial, are probably lower in our jurisdiction.

- *Indirect Impact*

Enactment of CB-026-2022 could have a positive indirect impact by lowering the emission of greenhouse gasses, and consequentially the long-term cost of operating buildings within the County. Lower long-term operating costs to businesses may provide a competitive edge in luring tenants to the jurisdiction, in both costs and for environmentally conscious business owners.

- *Appropriated in the Current Fiscal Year Budget*

No.

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**Effective Date of Proposed Legislation:**

The Act shall take effect 45 calendar days after it becomes law.

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If you require additional information, or have questions about this fiscal impact statement, please reach out to me via phone or email.

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<sup>3</sup> Fiscal Impact section of [Montgomery County \(MD\) Bill 16-21](#)