

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



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Kwame R. Brown  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi   
Chief Financial Officer

**DATE:** January 30, 2012

**SUBJECT:** Fiscal Impact Statement – “Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012”

**REFERENCE:** Bill 19-569, Draft Committee Print as shared with OCFO on January 19, 2012

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**Conclusion**

Funds are sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the bill.

**Background**

The District’s Departments of the Environment (DDOE) and Consumer and Regulatory Affairs (DCRA) are responsible for implementing the provisions of the Green Building Act of 2006,<sup>1</sup> which generally established high-performance, green building standards for public and private planning, design, construction, operation, and maintenance of building projects.

The bill amends the Green Building Act of 2006 with various new definitions,<sup>2</sup> technical changes, clarifications, and broader compliance mechanisms. The bill clarifies the standards to use in evaluating green building requirements,<sup>3</sup> the components and green building requirements

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<sup>1</sup> D.C. Law 16-234, D.C Official Code § 6-1451.01 *et seq.*

<sup>2</sup> The bill adds or edits the following definitions: certificate of occupancy, common space, first building permit, LEED standard for commercial and institutional building, mixed use, nonresidential, District financed or District instrumentality financed, residential, and substantial improvement.

<sup>3</sup> The standards are those in place one year prior to the earliest of approval of a land disposition agreement, application to the Board of Zoning Adjustment, application to the Historical Preservation Review Board, or other substantial interactions with the District as defined by the Mayor

applicable to residential, nonresidential, and mixed use buildings, the LEED<sup>4</sup> standard for public schools, penalties for failing to meet green building requirements when the District finances a project, and that green building practices should be included in District construction code revisions. Additionally, the bill redefines the Green Building Fund<sup>5</sup> and the approved uses of its funds.

Two provisions of the bill could have a fiscal impact. First, the bill redefines the financial security requirements that building owners must meet to ensure LEED standards are achieved within two years of receiving the certificate of occupancy. Under current law, building owners must secure their pledge to meet the LEED standards by placing cash in escrow, or posting a bond or letter of credit.<sup>6</sup> These mechanisms provide cash or a cash equivalent that can be drawn upon and put in the Green Building Fund should the building owner fail to meet these requirements within the two years.

The bill provides the option to sign a binding pledge to meet LEED standards in lieu of a financial pledge. Under this option, if building owners do not meet these standards within the prescribed two years, they would face a one-time fine of \$7.50 per square foot for buildings less than 100,000 square feet and \$10 per square foot for buildings 100,000 square feet or greater.<sup>7</sup> Additionally, if the building still fails the requirements after four years, building owners would be required to pay a monthly fine of \$0.02 per square foot.<sup>8</sup> All fines are deposited into the Green Building Fund. The Mayor is authorized to reduce any fines or issue up to three one-year extensions to building owners who do not meet the two year requirement.

The second aspect of the bill that could have a fiscal impact has to do with the Green Building Act of 2006's provisions related to privately owned buildings. Under current law, buildings are required to benchmark using the EPA Portfolio Manager<sup>9</sup> program and submit the data to DDOE by January 1 of the following year. The bill establishes April 1 as the new date for reporting Portfolio Manager data (which will, under the bill, include water consumption data) and imposes a \$100 per day fine for noncompliance.

### **Financial Plan Impact**

Funds are sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the bill.

DDOE and DCRA are the agencies responsible for implementing the bill. DDOE currently has a vacant full-time equivalent position that will oversee Portfolio Manager data submissions and the

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<sup>4</sup> LEED stands for Leadership in Energy and Environmental Design and provides building owners and operators with a framework for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions ([www.usgbc.org](http://www.usgbc.org)). Schools must meet LEED standards for commercial and institutional buildings at the gold level if funding is available.

<sup>5</sup> The fund was established in D.C. Official Code § 6-1451.07.

<sup>6</sup> The bill changes the financial security amount to be the same as the \$7.50 and \$10 fine amounts as outlined above, but discounted 20 percent.

<sup>7</sup> The total fine amount would not exceed \$3,000,000.

<sup>8</sup> The fine accrues monthly, but is assessed annually and does not count toward the \$3,000,000 fine limit.

<sup>9</sup> Portfolio Manager, the U.S. EPA's free online energy benchmarking system, is a widely accepted tool that enables building owners to track energy use in their buildings and compare a building's energy performance against similar buildings nationwide.

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finances associated with non-compliance.<sup>10</sup> DCRA is responsible for issuing a certificate of occupancy for a project and any costs associated with implementing the binding pledge financial security option and associated fines can be absorbed in its existing resources. DDOE and DCRA work closely together on issues of green building requirements and any other costs associated with implementation are administrative and can be absorbed in the existing resources of the Departments.

The bill could increase funds in the Green Building fund, but the Office of Revenue Analysis does not have sufficient information to estimate any revenues associated with the proposed fines due to a lack of comparable programs.

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<sup>10</sup> DDOE has successfully implemented other programs with an enforcement component with one FTE, including D.C. Law 18-55 which implemented a \$0.05 fee on disposable carry-out bags.