

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: April 24, 2012

SUBJECT: Fiscal Impact Statement – “Sustainable DC Act of 2012”

REFERENCE: Draft Bill shared with Office of Revenue Analysis on April 19, 2012

Conclusion

Funds are sufficient in the FY 2012 budget and the proposed FY 2013 through FY 2016 budget and financial plan to implement the bill.

Background

The bill is comprised of nine subtitles related to distinct program areas within the District Department of the Environment (DDOE).

Subtitle I(A), Energy Efficiency Financing Amendment Act of 2012

The Energy Efficiency Financing Act of 2010¹ (“Act”) established a structure to allow District residents and businesses to finance energy improvements to their facilities by leveraging future energy savings and receiving loans from the District. The loans are supported by special assessments² on the property owners equal to the expected energy savings plus administrative costs. The Act also established two special purpose funds, the Special Energy Assessment Fund, to receive the proceeds of the special assessments, and the National Capital Energy Fund, to receive proceeds of the assessment supported bond issuances.

The proposed subtitle makes various technical amendments to the Act, expands the allowable efficiency improvements to include water and stormwater, ensures grants can be received in both special purpose funds, clarifies and expands the allowable uses of funds within the special purpose

¹ Effective May 27, 2010 (L18-183, 57 DCR 3406).

² D.C. Official Code § 47-895.31 *et seq.*

funds, expands the required energy audit components used as a basis for the special assessment, and allows for the District to put a lien on a property owner with delinquent tax payments.

Subtitle I(B) – Conservation and Protection of Natural Resources Incentive Clarification Act of 2012

The proposed subtitle clarifies that funds received as rebates or incentives from DDOE environmental programs are tax exempt for gross income purposes. The tax exemption applies to the following four programs:

- RiverSmart Communities: Demonstration Program;
- RiverSmart Homes Incentive Program;
- RiverSmart Homes Rebate Program; and
- RiverSmart Rooftops Greenroof Rebate Program.

Proceeds from a similar DDOE program for energy efficiency, the renewable energy incentive program, are currently categorized as tax exempt.³

Subtitle I(C) – Clean and Affordable Energy Benchmarking Amendment Act of 2012

The Green Building Act of 2006 (GBA)⁴ and the Clean and Affordable Energy Act of 2008 (CAEA)⁵ established the requirements for public and privately-owned buildings in the District of Columbia to benchmark their energy performance using the U.S. EPA Portfolio Manager online tool.⁶ DDOE is responsible for receiving and analyzing benchmarking data and ensuring compliance with the GBA and CAEA. The proposed subtitle adds implementation of the Energy Star benchmarking program as an allowable expense of the Sustainable Energy Trust Fund in the amount of \$500,000 per year.

Subtitle I(D) – Renewable Energy Incentive Program Amendment Act of 2012

DDOE paid nearly 430⁷ renewable energy rebates totaling over \$4.9 million through its renewable energy incentive program. This program is scheduled to terminate at the end of FY 2012. The proposed subtitle extends the renewable energy incentive program through FY 2013 with \$2,000,000 in funding from the Sustainable Energy Trust Fund.

Subtitle II(A) – Anacostia River Clean Up and Protection Fertilizer Act of 2012

The proposed subtitle restricts the application of fertilizers, implements a public education program, imposes specific labeling requirements on manufacturers, and establishes a fine structure for violations. Details for the four main components are as follows:

- Restrict fertilizer application: must be beyond 25 feet from a waterbody, not during a heavy rainfall or when soil is saturated, only between March 1st and November 15th, only fertilizers

³ D.C. Code § 47-1803.02(a)(2)(AA).

⁴ D.C. Law 16-234.

⁵ D.C. Law 17-250.

⁶ 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.

⁷ 4th Quarter Clean and Affordable Energy Quarterly Report for fiscal years 2009, 2010, and 2011.

with less than 0.67 percent phosphate by weight, and for fertilizers with nitrogen, applied at a rate of less than 0.7 pounds per 1,000 feet of water soluble nitrogen or less than 0.9 pounds per 1,000 square feet of total nitrogen;

- Public education program: create a sheet for retailers that sell 50 pound or more bags of fertilizer and a general public awareness campaign addressing the proper application and management of fertilizer and the impact of fertilizer misuse on the environment;
- Labeling requirement: Requires manufacturers to add to their labels, "Do not apply near water, storm drains or drainage ditches. Do not apply if heavy rain is expected. Apply this product only to your lawn, and sweep any product that lands on the driveway, sidewalk, or street back onto your lawn;" and
- Violations: Violations of this subtitle are civil infractions where the first violation shall receive a warning, the second violation is a class 5 infraction, the third is a class 4 infraction, and each subsequent violation is a class 3 infraction.⁸

In 2011, the State of Maryland passed a similar law entitled the Fertilizer Use Act of 2011.⁹ The proposed subtitle closely resembles the Maryland law excluding a few costlier provisions related to the training and certification of fertilizer applicators.

Subtitle II(B) – Sustainable Urban Agriculture Apiculture Act of 2012

The District has a small number of bee colonies, which are currently unregulated. The proposed subtitle would authorize the registration and permitting of a colony under various restrictions. Colonies must be European stock, kept in Langstroth-type hives, kept 15 feet from a property line unless a proper flyaway barrier¹⁰ is in place, and the owner must carefully monitor aggressive behavior, swarms, and other nuisance behavior. The District is also authorized to remedy any colony neglected by an owner, prevent the spread of bee diseases, and impose fees and fines to enforce the subtitle.

New York¹¹ and Chicago¹² are two prominent cities where bee colonies can be registered and maintained.

Subtitle III(A) – Child-occupied Facility Healthy Air Amendment Act of 2012

In December 2010, the Council passed the Human and Environmental Health Protection Act of 2010¹³ (Act) prohibiting the installation of a machine designed to clean clothing or fabric that uses perchloroethylene after January 1, 2014 and a full ban of the chemical as a cleaning agent after January 1, 2029. The proposed subtitle amends the Act to require dry cleaning facilities to obtain a permit to use perchloroethylene or n-propyl bromide as a cleaning agent and prohibits the establishment of a new facility utilizing these chemicals within 200 feet of an existing child-occupied facility.¹⁴ The proposed subtitle also amends the Pre-K Enhancement and Expansion

⁸ Infractions are defined in 16 DCRM § 3200 and fine amounts are set in 16 DCRM § 3201.

⁹ Senate Bill 487 and House Bill 573.

¹⁰ A flyaway barrier must be 6 feet high and extend 10 feet beyond the colony in each direction.

¹¹ New York City Health Code Article 161.

¹² Registration is required with the Illinois Department of Agriculture (510 Illinois Compiled Statutes 20).

¹³ District Law 18-336, Sec. 4.

¹⁴ The bill defines a child-occupied facility as a building or portion of a building, which as part of its function receives children under the age of 6 on a regular basis, and is required to obtain a certificate of occupancy as a precondition to performing that function.

Amendment Act of 2008¹⁵ to prohibit the licensing of a child-occupied facility within 200 feet of a dry cleaning facility that uses the restricted chemicals.

Subtitle III(B) – Low-income Weatherization Plus Program Amendment Act of 2012

DDOE audited over 1,400¹⁶ housing units and installed energy improvements through its low-income weatherization plus program. The program ended in September 2011 when funding was no longer available. The proposed subtitle reinstates the weatherization plus program for FY 2013 with \$1,000,000 in funding from the Sustainable Energy Trust Fund.

Subtitle III (C) – Heating System Repair, Replacement, or Tune-up Program Amendment Act of 2012

DDOE completed repairs, replacements, or tune-ups to over 750¹⁷ heating system units through its heating system repair, replacement, or tune-up program. This program assists low-income residents with their home heating systems through audits and maintenance or replacement of those systems. The program ended in September 2011 when funding was no longer available. The proposed subtitle reinstates the heating system repair, replacement, or tune-up program for FY 2013 with \$1,000,000 in funding from the Sustainable Energy Trust Fund.

Financial Plan Impact

Funds are sufficient in the FY 2012 budget and the proposed FY 2013 through FY 2016 budget and financial plan to implement the bill. Various costs imposed by the bill can be absorbed through existing resources. Additionally, subtitles that are supported by the fund balance of the Sustainable Energy Trust Fund can only be implemented after the necessary budget action is taken for FY 2012.

Subtitle I(A) does not have a fiscal impact on the District's budget and financial plan. The District already issues bonds to support loans for residents and businesses to make energy improvements to their facilities. These bonds don't have an impact on the budget and financial plan, or effect the debt cap, since revenues supporting the bonds are special assessments applied to the participating property owners' regular tax bills. Special assessments also include funds sufficient to cover the District's costs of borrowing and other administrative costs, so any additional administrative costs associated with this subtitle will be covered through the special assessment process and not impact the District's budget and financial plan.

Subtitle I(B), which exempts rebates or incentives from four DDOE environmental programs are tax exempt for gross income purposes, does not have a fiscal impact. Proceeds from these programs are not currently taxable and there was never an intention to tax them.

Subtitle I(C), which allocates \$500,000 annually from the Sustainable Energy Trust Fund to implement the Energy Star benchmarking program can be implemented with existing resources. This cost will be absorbed by an allowable 8 percent set-aside of the Sustainable Energy Utility¹⁸ contract; DDOE can use this allocation use for evaluation and monitoring purposes. In FY 2012, the

¹⁵ District Law 17-202.

¹⁶ 4th Quarter Clean and Affordable Energy Quarterly Report for fiscal years 2009, 2010, and 2011.

¹⁷ 4th Quarter Clean and Affordable Energy Quarterly Report for fiscal years 2009, 2010, and 2011.

¹⁸ The Sustainable Energy Utility helps households, businesses and institutions save energy and money through energy efficiency and renewable energy programs (www.dcseu.com).

contract amount is \$15 million providing \$1.2 million for evaluation and monitoring. In FY 2013, the contract is \$17.5 million and each year thereafter, the contract amount is \$20 million. Thus, the allowable 8 percent available for evaluation and monitoring can cover the \$500,000 cost of this subtitle.

Subtitle I(D), which extends the renewable energy incentive program for one more year, with a capped benefit of \$2 million can be implemented through existing resources. DDOE is expected to have \$6,833,843 in fund balance¹⁹ that will be used to fund this program in FY 2013. The Agency's fiscal officer will need to take the necessary budget request steps to make the required fund balance available for program expenditures.

Subtitle II(A), which restricts the use of fertilizers, and establishes sanctions, labeling requirements and public education programs regarding the use of fertilizers, can be implemented with existing resources.²⁰

Subtitle II(B), which authorizes the registration and permitting of a bee colony under various restrictions, does not have a fiscal impact. The current number of colonies in the District is small and it is unknown how many new colonies would be established as a result of this subtitle. Thus, while registration and permitting requirements would generate new revenues, they are expected to be minimal. The provisions related to removal of neglected or dangerous colonies would impose costs on the Department, but they would be absorbed through existing resources.

Subtitle III(A) which prohibits the placement of dry cleaning facilities that use perchloroethylene or n-propyl bromide within 200 feet of child-occupied facilities, does not have a fiscal impact. District houses 50 to 60 dry cleaning facilities that use perchloroethylene²¹ and approximately 5 of them are located within 200 feet of child-occupied facility. These facilities are exempt under this subtitle and the provisions of the Human and Environmental Health Protection Act of 2010 limit the impact of the proposed subtitle to newly established facilities between enactment of this Act and the end of 2013 when new machines can no longer be installed. The costs associated with ensuring new dry cleaners utilizing the chemicals are not established within 200 feet of a child-occupied facility and ensuring new child-occupied facilities are not established within 200 feet of a dry cleaners using the chemicals are administrative and can be absorbed within the existing resources of DDOE and the Office of the State Superintendent of Education's Division of Early Childhood Education.

Subtitle III(B) which extends the weatherization plus program for one more fiscal year, can be implemented with existing resources. The subtitle allocates \$1 million from the Sustainable Energy

¹⁹ The FY 2011 fund balance for the Sustainable Energy Trust Fund was undesignated in FY 2011, but will be restored to this fund with the implementation of Title X, Subtitle A., Sec. 10004 FY 2012 Budget Support Act, effective September 14, 2012 (L19-21, 58 DCR 6226)

²⁰ There could be additional costs associated with implementation, but those are unknown and would be borne by retailers, manufactures, and applicators of fertilizers. DDOE is confident retailers can transition their product offerings to meet the chemical composition requirements as compliant products are readily available. Applicators of fertilizer should also be able to comply with the application restrictions without a significant disruption to their businesses. The labeling requirements could impose short-term costs on manufactures of fertilizer, but the language used is the same imposed by Maryland's law and manufacturers are likely preparing for that change (Based on conversations with DDOE on April 20, 2012.)

²¹ DDOE is not aware of any dry cleaners currently using n-propyl bromide.

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Trust Fund to support the extension. DDOE is expected to have \$6m in its FY 2012 fund balance²² that will be used to fund this program in FY 2013.

Subtitle III(C), which reestablishes DDOE's system repair, replacement, or tune-up program for FY 2013 with \$1 million in funding from the Sustainable Energy Trust Fund, can be implemented within existing resources. The fund will have sufficient fund balance in FY 2013 to pay for the associated costs.²³

²² See footnote 19.

²³ See footnote 19.