
Chairman Kwame R. Brown
at the request of the Mayor

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5 A BILL

6 _____
7 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
8 _____
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10 Chairman Kwame R. Brown, at the request of the Mayor, introduced the following act, which
11 was referred to the Committee on _____.

12
13 To amend the Energy Efficiency Financing Act of 2010 to authorize the issuance of bonds to
14 private financing institutions, to augment remedies for failure to pay the special
15 assessment; to amend Title 47 of the District of Columbia Official Code to exempt from
16 computation as District of Columbia gross taxable income, incentives received from
17 District Department of the Environment Riversmart programs that encourage the
18 conservation and protection of natural resources; to amend the Clean and Affordable
19 Energy Act of 2008 to include the EnergyStar® building benchmarking program as a
20 program that may be funded by the Sustainable Energy Trust Fund; to amend the Clean
21 and Affordable Energy Act of 2008 to permit the District to continue to administer a
22 program that provides renewable energy rebates; to reduce the amount of fertilizer
23 reaching the District's water resources, and thereby minimize the growth of algae and
24 aquatic plants, and the consequent harm to the economic value of water resources, and
25 damage to aquatic ecosystems, fisheries, and water quality; to support sustainable urban
26 agriculture through the promotion of apiculture in the District; to amend the Human and
27 Environmental Health Protection Act of 2010 and the Pre-k Enhancement and Expansion
28 Amendment Act of 2008, to prohibit the proximate location of a child-occupied facility
29 and a dry cleaning facility that uses perchloroethylene or n-propyl bromide as a cleaning
30 agent for clothes or other fabrics; to educate owners of dry cleaning facilities about the
31 dangers of perchloroethylene and n-propyl bromide, its proper handling, and less toxic
32 dry cleaning alternatives; to amend the Clean and Affordable Energy Act of 2008 to
33 allow the District to restart a program that helps to reduce energy costs for low-income
34 families, particularly the elderly, people with disabilities, and children; and to amend the
35 Clean and Affordable Energy Act of 2008 to permit the District to restart a program that
36 will repair, replace, and tune-up heating systems and hot water heaters in low-income
37 households and reduce their energy costs, while ensuring their health and safety.

1 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
2 act may be cited as the “Sustainable DC Act of 2012”.

3 **TITLE I. ECONOMY.**

4 **SUBTITLE A. ACCESSING PRIVATE CAPITAL TO PROMOTE ENERGY**
5 **EFFICIENCY.**

6 Sec. 101. Short title.

7 This subtitle may be cited as the “Energy Efficiency Financing Amendment Act of
8 2012”.

9 Sec. 102. The Energy Efficiency Financing Act of 2010, effective May 27, 2010 (D.C.
10 Law 18-183; D.C. Official Code § 8-1778.01 *et seq.*) is amended as follows:

11 (a) Section 101 (D.C. Official Code § 8-1778.01) is amended as follows:

12 (1) A new paragraph (2)(F) is added to read as follows:

13 “(2)(F) An officer or employee of the office of the Chief Financial Officer to whom the
14 Chief Financial Officer has delegated a function of the Chief Financial Officer under this act
15 pursuant to section 424(d) of the Home Rule Act, and who has been designated as an Authorized
16 Delegate for purposes of this act.”.

17 (2) Paragraph (10) is amended by as follows:

18 (A) The lead-in text is amended by striking the phrase “energy utility” and
19 inserting the phrase “energy or water utility” in its place.

20 (B) Subparagraph (J) is amended by striking the phrase “electric or gas”
21 and inserting the phrase “electric, gas, water, or stormwater” in its place.

22 (3) A new paragraph (11)(A) is added to read as follows:

23 “(11)(A) “Energy Efficiency Loan Agreement” means a loan, or other agreement to

1 make, document, or implement an Energy Efficiency Loan, entered into pursuant to section
2 301(c) of this act.”.

3 (4) New paragraphs (14A) and (14B) are added to read as follows:

4 “(14A) “Issuance Costs” means fees, costs, charges, or expenses paid or incurred in
5 connection with the authorization, preparation, printing, issuance, sale, and delivery of an applicable
6 series of bonds and the making of energy efficiency loans contemplated thereby, including program
7 fees and administrative fees charged by the District; underwriting, legal, accounting, rating agency,
8 and other financing fees, costs, and expenses; fees paid to financial institutions and insurance
9 companies; letter of credit fees; compensation to financial advisors and other persons except full
10 time employees of the District and entities performing services on behalf of or as agents for the
11 District; and other fees, costs, charges, and expenses incurred in connection with the development
12 and implementation of the financing documents, the closing documents, and those other documents
13 necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale,
14 marketing, and delivery of each applicable series of bonds and the making of energy efficiency
15 loans contemplated thereby.”.

16 “(14B) “Private Lending Institution” means a non-government business organization
17 that makes an Energy Efficiency Loan and approved by the Mayor to participate in the Energy
18 Efficiency Loan program pursuant to sections 211 and 308 of this act.”.

19 (b) Section 201 (D.C. Official Code § 8-1778.21) is amended as follows:

20 (1) Subsection (a)(2) is amended by striking the phrase “, subject to authorization
21 by Congress”.

22 (2) A new subsection (d) is added to read as follows:

23 “(d) The Mayor is authorized to:

1 “(1) Accept funds from grants from a public or private source;

2 “(2) Deposit grant funds in a special account in the Special Energy Assessment

3 Fund; and

4 “(3) Use grant funds for a purpose for which monies in the Special Energy
5 Assessment Fund may be spent.”.

6 (c) Section 202(b) (D.C. Official Code § 8-1778.22(b)) is amended to read as follows:

7 “(b) The Mayor is authorized to pay from the proceeds of a bond’s Issuance Costs, the
8 cost of funding capitalized interest and required reserves, and other costs authorized by section
9 490(f) of the Home Rule Act. In the event bonds are sold other than through a public offering,
10 the Issuance Costs may be paid from the Special Energy Assessment Program Administrative
11 Account.”.

12 (d) Section 205(e) (D.C. Official Code § 8-1778.25(e)) is amended to read as follows:

13 “(e) The District of Columbia Procurement Practices Reform Act of 2010, effective April
14 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), and Subchapter III-A of
15 Chapter 3 of Title 47 of the District of Columbia Official Code, shall not apply to a contract that
16 the Mayor may from time to time enter into or the Mayor may determine to be necessary or
17 appropriate, for purposes of this Title.”.

18 (e) A new Section 211 is added to read as follows:

19 “Sec. 211. Bond issuance to private lending institutions.

20 “If the Mayor determines that a bond issuance is in the interest of the District and promotes
21 the goal of encouraging the installation of Energy Efficiency Improvements, a bond may be issued
22 to, purchased by (and subsequently redeemed or transferred to another holder at the discretion of the
23 Private Lending Institution) or held by a Private Lending Institution that makes an Energy

1 Efficiency Loan to a property owner. In such event, the proceeds of the bond may be paid directly to
2 the property owner or the contractor installing the Energy Efficiency Improvements and not paid
3 into the National Capital Energy Fund. The amount of the Energy Efficiency Loan shall be
4 determined as provided in Title III of this act and the Private Lending Institution shall be an
5 additional party to the Energy Efficiency Loan Agreement.”.

6 (f) Section 301 (D.C. Official Code § 8-1778.41) is amended as follows:

7 (1) Subsection (a) is amended to read as follows:

8 “(a) There is established as a nonlapsing fund the National Capital Energy Fund. The
9 Chief Financial Officer shall deposit the proceeds from a sale of a bond into the National Capital
10 Energy Fund, except as provided in section 211 of this act.” .

11 (2) Subsection (b) is amended by striking the phrase “this section without regard to
12 fiscal year limitation, subject to authorization by Congress” and inserting the phrase “subsection (c)
13 and this section, without regard to fiscal year limitation” in its place.

14 (3) Subsection (d) is amended to read as follows:

15 “(d) An Energy Efficiency Loan shall bear interest at the rate of interest on the series of
16 bonds issued immediately preceding or simultaneously with the date of execution of the Energy
17 Efficiency Loan, plus an amount determined by the Mayor to be sufficient to pay all
18 administrative costs specified in section 201. Notwithstanding the preceding sentence, when a
19 bond is issued pursuant to section 211, the interest rate on the Energy Efficiency Loan shall be
20 the same as the interest rate on a bond issued to a Private Lending Institution. The principal,
21 interest, and administrative costs of an Energy Efficiency Loan shall be separately stated to
22 permit the allocation thereof as provided in this act.”.

23 (4) Subsection (e) is amended to read as follows:

1 “(e) If a first source of funds deposited in the National Capital Energy Fund is an
2 obligation that requires the District to use those funds solely to repay principal and interest
3 thereon, the Energy Efficiency Loan, or other agreement shall be structured to repay the funding
4 source, plus administrative costs. A Special Assessment payment shall be deposited in the same
5 manner specified in section 201.”.

6 (5) A new subsection “(g)” is added as to read as follows:

7 “(g) The Mayor is authorized to:

8 “(1) Accept grant funds from a public or private source;

9 “(2) Deposit grant funds in a special account in the National Capital Energy Fund;

10 and

11 “(3) Use grant funds for a purpose for which monies in the National Capital
12 Energy Fund may be spent.”.

13 (g) Section 302(a) (D.C. Official Code § 8-1778.42(a)) is amended as follows:

14 (1) Paragraph (4) is amended to read as follows:

15 “(4) An Energy Efficiency Audit from an auditor approved by the Administrator stating
16 the amount of energy and water used by the subject property and the amount of the energy,
17 water, and stormwater to be saved by the property owner through the installation of the Energy
18 Efficiency Improvements, shall include in its calculation of savings reasonable estimates of:

19 “(A) Energy and water price inflation likely in the future utility costs of
20 the property; and

21 “(B) Additional energy savings expected from the property owner’s
22 selection of Energy Efficiency Improvements when replacing equipment using energy or water.”.

23 (2) Paragraph (5) is amended by striking the phrase “energy saved by” and

1 inserting the phrase “savings from” in its place.

2 (3) A new paragraph “(8)” is added to read as follows:

3 “(8) Other information or documentation as the Administrator may deem necessary to
4 evaluate a loan application.”.

5 (h) Section 303(c) (D.C. Official Code § 8-1778.43(c)) is amended by striking the phrase
6 “a loan, or other, agreement with a property owner, the administrator shall verify, based upon
7 information provided in the property owner’s application, that the value of the energy saved by”
8 and inserting the phrase “an Energy Efficiency Loan Agreement with a property owner, the
9 administrator shall verify, based upon information provided in the property owner’s application,
10 that the value of the savings from” in its place.

11 (i) Section 401(b) (D.C. Official Code § 47.895 *et seq.*) is amended as follows: .

12 (1) By striking the word “debt service on the Energy Efficiency Loan” and
13 inserting the phrase “debt service on the Energy Efficiency Loan and applicable fees and costs”
14 in its place.

15 (2) By striking the phrase “unpaid real property taxes.” and inserting the phrase
16 “unpaid real property taxes; provided, that a sale or other transfer, including assignment of a lot
17 subject to the Special Assessment may be made without a public auction, if the sale or transfer is
18 the result of failure to pay the Special Assessment.” in its place.

19 **SUBTITLE B. ENSURING ENVIRONMENTAL INCENTIVES ARE TAX**
20 **EXEMPT.**

21 Sec. 111. Short title.

22 This subtitle may be cited as the “Conservation and Protection of Natural Resources
23 Incentive Clarification Amendment Act of 2012”.

1 Sec. 112. Section 47-1803.02(a)(2) of the District of Columbia Official Code is amended
2 by adding a new subparagraph (AB) to read as follows:

3 “(AB) The amount received by a taxpayer from any of the following programs whose
4 funding is authorized by section 152 of the District Department of the Environment
5 Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §
6 8-152.02):

7 “(i) RiverSmart Communities: Demonstration Program;

8 “(ii) RiverSmart Homes Incentive Program;

9 “(iii) RiverSmart Homes Rebate Program; or

10 “(iv) RiverSmart Rooftops Greenroof Rebate Program.”.

11 **SUBTITLE C. FULLY FUNDING THE ENERGY STAR BUILDING**

12 **BENCHMARKING PROGRAM.**

13 Sec. 121. Short title.

14 This subtitle may be cited as the “Clean and Affordable Energy Benchmarking
15 Amendment Act of 2012”.

16 Sec. 122. Section 210(c) of the Clean and Affordable Energy Act of 2008, effective
17 October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1774.10(c)) is amended by adding a
18 new paragraph “(8)” to read as follows:

19 “(8) Implementation of the EnergyStar[®] benchmarking program required by D.C. Official
20 Code § 6-1451.03(c), in the amount of \$500,000, annually.”.

21 **SUBTITLE D. PROMOTING RENEWABLE ENERGY GENERATING**

22 **SYSTEMS.**

23 Sec. 131. Short title.

1 This subtitle may be cited as the “Renewable Energy Incentive Program Amendment Act
2 of 2012”.

3 Sec. 132. The Clean and Affordable Energy Act of 2008, effective October 22, 2008
4 (D.C. Law 17-250; D.C. Official Code § 8-1774.01 *et seq.*) is amended as follows:

5 (a) Section 209(c) (D.C. Official Code § 8-1774.09(c)) is amended by striking the year
6 “2012” and inserting the year “2013” in its place.

7 (b) Section 210(c)(7) (D.C. Official Code § 8-1774.10(c)(7)) is amended by striking the
8 year “2012” and inserting the year “2013” in its place.

9 **TITLE II. ENVIRONMENT.**

10 **SUBTITLE A. PREVENTING FERTILIZER POLLUTION IN OUR STREAMS**
11 **AND RIVERS.**

12 Sec. 201. Short title.

13 This subtitle may be cited as the “Anacostia River Clean Up and Protection Fertilizer
14 Amendment Act of 2012”.

15 Sec. 202. Definitions.

16 For the purposes of this subtitle, the term:

17 (1) “Chemical fertilizer” means an inorganic material of wholly or partially synthetic
18 origin that contains one or more nutrients intended to promote plant growth.

19 (2) “Department” means the District Department of the Environment.

20 (3) “Enhanced efficiency fertilizer” means a fertilizer product that increases plant
21 uptake and decreases the potential of nutrient loss to the environment, including gaseous
22 loss, leaching, or runoff, when compared to an appropriate reference fertilizer product.

23 (4) “Fertilizer” means a material that contains one or more nutrients intended to

1 promote plant growth.

2 (5) “Low phosphorous fertilizer” means a fertilizer containing not more than 5% of
3 available phosphate (P_2O_5), and that has an application rate not to exceed 0.25 pound of
4 available phosphate (P_2O_5)/1,000 square feet/application and 0.5 pound of available
5 phosphate (P_2O_5)/1,000 square feet/year.

6 (6) “Organic fertilizer” means a primarily carbon-based material that contains one or
7 more nutrients intended to promote plant growth, such as manures, blood meal, fish
8 emulsion, cottonseed meal, guano, wood ashes, processed sewage wastewater solids, yard
9 waste, compost, or other similar materials; and that does not contain synthetic materials or
10 materials that are changed in a physical or chemical manner from their initial state, except by
11 physical manipulation, including drying, cooking, chopping, grinding, shredding, or
12 pelleting.

13 (7) “Soil test” means a scientific measurement that determines the nutrient levels of
14 soil.

15 (8) “Turf” means nonagricultural managed grasses, such as are found at parks,
16 recreation areas, golf courses, commercial locations, cemeteries, athletic fields, schools,
17 universities, government grounds, and other similar nonagricultural managed grasses. Turf
18 does not include non-grass groundcovers, shrubs, trees, indoor applications including
19 greenhouses, and vegetable and flower gardens, and residential lawns.

20 (9) “Waterbody” means a wetland, watercourse, river, stream, creek, storm water
21 retention or detention basin, or other similar water resource.

22 Sec. 203. Fertilizer application requirements.

23 (a) Fertilizer may only be applied to turf:

1 (1) Beyond a 25-foot buffer area from a waterbody;

2 (2) When sufficient water is applied to the soil within 24 hours of application
3 to immobilize the fertilizer and prevent fertilizer loss by runoff;

4 (3) When a heavy rainfall is not occurring, and when soils are not saturated
5 and the potential for fertilizer movement off-site exists;

6 (4) After March 1st and before November 15th in any calendar year;

7 (5) When the ground is not frozen; and

8 (6) In an amount consistent with an annual recommended rate established by
9 the Department.

10 (b) Fertilizer may not be applied to an impervious surface, or be stored in a container
11 on an impervious surface in a manner that would permit fertilizer runoff. Fertilizer that is
12 inadvertently applied or leaked onto an impervious surface shall be returned for reuse to the
13 target surface, or to either its original or another appropriate container.

14 (c) Fertilizer containing phosphorous.

15 (1) A chemical fertilizer that contains phosphorous in an amount greater than
16 0.67% phosphate by weight may not be applied to turf.

17 (2) A low phosphorus organic fertilizer may be applied to turf after a soil test
18 is conducted within the last 3 years that indicates the level of phosphorus in the soil is
19 insufficient to establish, reestablish, repair, or support adequate turf growth, as determined
20 by the Department. The application of fertilizer allowed under this paragraph shall not
21 exceed the amount or rate of application of fertilizer recommended by the soil test.

22 (d) Fertilizer containing nitrogen.

23 (1) A fertilizer containing nitrogen may only be applied to turf at an

1 application rate of less than 0.7 pounds per 1,000 feet of water-soluble nitrogen, and at an
2 application rate of less than 0.9 pounds per 1,000 square feet of total nitrogen.

3 (2) Paragraph (1) of this subsection notwithstanding, an enhanced efficiency
4 fertilizer containing nitrogen that has a release rate of less than 0.7 pounds per 1,000 square
5 feet of total nitrogen per month may be applied at an annual application rate of less than 2.5
6 pounds per 1,000 square feet of nitrogen. The annual total application rate may not exceed
7 80% of the annual recommended rate for total nitrogen, as established by the Department.

8 (3) A fertilizer containing nitrogen may only be applied to turf if it is at least
9 20% slow release.

10 Sec. 204. Fertilizer public education program.

11 Within 180 days of the effective date of this subtitle:

12 (a) A retail establishment that sells fertilizer in bags weighing 50 pounds or more shall
13 prominently display information that references the requirements of this subtitle, the effects
14 of fertilizers on local waterbodies, a warning not to apply fertilizer when heavy rain is
15 expected, and the proper use of lawn care products to reduce pollution in the Chesapeake
16 Bay and its tributaries, as recommended by the Department.

17 (b) The Department shall develop a program of public education that shall include the
18 dissemination of information regarding nutrient pollution, soil testing, proper interpretation
19 of fertilizer label instructions, and the proper use and calibration of fertilizer application
20 equipment, best management practices for fertilizer use in the urban landscape, the
21 requirements of this subtitle, and the effects of fertilizers on the Chesapeake Bay and its
22 tributaries.

23 Sec. 205. Fertilizer labeling requirements.

1 A fertilizer used on turf that is distributed or sold in the District shall include a legible
2 label with at least the following information:

3 (1) The percentage of total nitrogen, including the percentage of other water soluble
4 nitrogen and water insoluble nitrogen;

5 (2) The percentage of available phosphate;

6 (3) The percentage of soluble potash; and

7 (4) (A) The following statement: "DO NOT APPLY NEAR WATER, STORM
8 DRAINS OR DRAINAGE DITCHES. DO NOT APPLY IF HEAVY RAIN IS EXPECTED.
9 APPLY THIS PRODUCT ONLY TO YOUR LAWN, AND SWEEP ANY PRODUCT
10 THAT LANDS ON THE DRIVEWAY, SIDEWALK, OR STREET BACK ONTO YOUR
11 LAWN."; or

12 (B) The environmental hazard statement recommended by the U.S.
13 Environmental Protection Agency for that product.

14 (C) The information required under this paragraph shall be printed in a legible
15 and conspicuous manner on at least one side of the container, or if it does not appear on the
16 face or display side of the container, it shall appear on the upper third of the side used.

17 Sec. 206. Penalties.

18 (a) A violation of this subtitle shall be a civil infraction for purposes of the Department
19 of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective July 16, 1985 (D.C.
20 Law 6-42; D.C. Official Code § 2-1801.01 et seq.)("Civil Infractions Act"). Civil fines, civil
21 fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this
22 subtitle, or the rules issued under authority of this subtitle, pursuant to the Civil Infractions Act.
23 Adjudication of any infractions shall be pursuant to the Civil Infractions Act.

1 (b) A person or retail establishment who violates this subtitle, or any rule or regulation
2 adopted pursuant thereto, shall be subject to the following penalties:

3 (1) Upon the first violation, the Mayor shall issue a written warning notice that a
4 violation has occurred. No penalty shall be imposed for the first violation.

5 (2) Upon subsequent violations:

6 (a) Class 5 infraction fine for the second violation;

7 (b) Class 4 infraction fine for the third violation; and

8 (c) Class 3 infraction fine for the fourth, and each subsequent violation.

9 (c) The Department may charge reasonable fees to cover costs associated with the
10 implementation of this subtitle.

11 (d) Revenues collected pursuant to this subtitle shall be deposited in the Anacostia River
12 Clean Up and Protection Fund.

13 Sec. 207. Rules.

14 The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure
15 Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may
16 issue rules to implement the provisions of this subtitle.

17 **SUBTITLE B. PROMOTING URBAN AGRICULTURE THROUGH**
18 **BEEKEEPING.**

19 Sec. 211. Short title.

20 This subtitle may be cited as the “Sustainable Urban Agriculture Apiculture Act of
21 2012”.

22 Sec. 212. Definitions.

23 For the purposes of this subtitle, the term:

1 (1) "Africanized bee" means a hybrid variety of *Apis mellifera* produced by the cross-
2 breeding of the aggressive African honey bee *Apis mellifera scutellata* with a more gentle
3 European honey bee subspecies.

4 (2) "Apiary" means a place where a colony is kept.

5 (3) "Bee disease" means an abnormal condition resulting from action by a parasite,
6 predator, or infectious agent.

7 (4) "Brood" means the embryo and egg, larva, and pupa stages of a bee.

8 (5) "Colony" means a hive and its equipment and appurtenances, including bees, brood,
9 comb, pollen, and honey.

10 (6) "Comb" means the assemblage of cells containing a living stage of a bee at a time
11 prior to emergence as an adult.

12 (7) "Department" means the District Department of the Environment.

13 (8) "Hive" means a container intended for the housing of a colony.

14 (9) "Honey bee" or "bee" means *Apis mellifera*.

15 (10) "Property" means a parcel of land where an apiary is located.

16 Sec. 213. General authorization and restrictions.

17 A colony may be kept in the District only if it is established and maintained in a manner
18 consistent with this act.

19 Sec. 214. Responsibilities of beekeepers.

20 (a) A colony shall be annually registered with the Department.

21 (b) No person shall bring into the District bees on combs, empty used combs, used hives,
22 or other used apiary appliances without first obtaining a permit from the Mayor.

23 (c) A colony shall be kept in Langstroth-type hives with removable combs, maintained in

1 sound and usable condition and with adequate space in the hive to prevent overcrowding and
2 deter swarming.

3 (d) A convenient source of water on the property shall be available to a colony.

4 (e) Beekeepers shall remediate promptly bee swarms and nuisance conditions.

5 Sec. 215. Colony density and distance from property line.

6 (a) No more than 4 hives may be kept on any one-quarter acre area of a property.

7 (b) Except as provided in subsection (c) of this section, a hive shall be located at least 15
8 feet from a property line.

9 (c) A hive may be located 5 feet from a property line if a flyway barrier that prevents the
10 passage of bees is maintained. The flyway barrier shall consist of a dense hedge, solid wall, or
11 solid fence parallel to the property line, at least 6 feet in height and extending 10 feet beyond the
12 colony in each direction.

13 Sec. 216. Colony disposition.

14 (a) A colony shall be selected from European stock bred for gentleness and non-
15 swarming characteristics. No Africanized bees may be maintained in the District.

16 (b) If a colony exhibits unusual aggressive characteristics by stinging or attempting to
17 sting without due provocation, or exhibits an unusual disposition toward swarming, the
18 beekeeper shall promptly re-queen the colony with a marked queen.

19 (c) The Mayor may destroy a colony of a beekeeper who fails to fulfill the requirements
20 of this section.

21 Sec. 217. Diseased colonies or equipment.

22 (a) The Mayor may take measures to control the spread of bee diseases and may order a
23 beekeeper to take measures to control the spread of bee diseases.

1 (b) The Mayor shall treat or destroy the bees, hives, and honey of a beekeeper who fails
2 to take measures ordered by the Mayor to eradicate or control bee disease.,.

3 Sec. 218. Fees.

4 (a) The Mayor may establish a schedule of fees for registration and may take any other
5 action necessary to implement this act.

6 (b) The Mayor may require a beekeeper to reimburse the District for the District's costs
7 resulting from implementation of this act with respect to the beekeeper.

8 Sec. 219. Enforcement.

9 (a) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure
10 Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue
11 rules to implement the provisions of this act.

12 (b) The Mayor may enforce this act by use of any injunctive relief, measure, or
13 combination of measures, authorized by this act or otherwise by law.

14 (c) Civil fines, penalties, and fees may be imposed as sanctions for any violation of this
15 act or any rules or regulations issued under the authority of this act, pursuant to Chapter 18 of
16 Title 2. Adjudication of the violation shall be pursuant to Chapter 18 of Title 2.

17 Sec. 220. 24 DCMR 904 is repealed.

18 **TITLE III. EQUITY.**

19 **SUBTITLE A. PROTECTING CHILDREN FROM TOXIC EXPOSURE.**

20 Sec. 301. Short title.

21 This subtitle may be cited as the "Child-occupied Facility Healthy Air Amendment Act
22 of 2012".

23 Sec. 302. Section 4 of the Human and Environmental Health Protection Act of 2010,

1 effective March 31, 2011 (D.C. Law 18-336; D.C. Official Code § 8-117.03), is amended as
2 follows:

3 (a) The title of section 4 is amended to read as follows:

4 “Sec. 4. Restrictions on the use of perchloroethylene and n-propyl bromide in dry
5 cleaning.”.

6 (b) By adding new subsections (c) and (d) to read as follows:

7 “(c) As used in this section, a “child-occupied facility” means a building, or portion of a
8 building, which as part of its function receives children under the age of 6 on a regular basis, and
9 is required to obtain a certificate of occupancy as a precondition to performing that function. The
10 term “child-occupied facility” includes a daycare center, a nursery, a preschool center, a
11 kindergarten classroom, child development center, a child development home, a child
12 development facility, a child-placing agency, infant care center, or similar such entity. The
13 location of a child-occupied facility as part of a larger structure does not make the entire
14 structure a child-occupied facility. Only the portion of the facility occupied or regularly visited
15 by children under age 6 shall be considered the child-occupied facility.”.

16 “(d) Beginning 12 months after the effective date of this act:

17 “(1) A dry cleaning establishment shall only use perchloroethylene or n-propyl
18 bromide as a cleaning agent for clothes or other fabrics after obtaining from the District
19 Department of the Environment a source category permit, in accordance with Title 20, Chapter 2
20 of the District of Columbia Municipal Regulations.

21 “(2) No permit shall be issued to dry cleaning establishment to use
22 perchloroethylene or n-propyl bromide as a cleaning agent for clothes or other fabrics that is
23 located within 200 feet of an existing child-occupied facility. The 200-foot restriction shall not

1 apply at a location where a dry cleaning establishment has used perchloroethylene or n-propyl
2 bromide within 90 days prior to the effective date of this act.”.

3 Sec. 303. The Pre-k Enhancement and Expansion Amendment Act of 2008, effective
4 July 18, 2008 (D.C. Law 17-202; D.C. Official Code § 38-271.01 *et seq.*), is amended as follows:

5 (a) Section 101 (D.C. Official Code § 38-271.01) is amended as follows:

6 (1) Paragraph (1) is amended to read as follows:

7 “(1) “Child-occupied facility” means a building, or portion of a building, which as part of
8 its function receives children under the age of 6 on a regular basis, and is required to obtain a
9 certificate of occupancy as a precondition to performing that function. The term “child-occupied
10 facility” includes a daycare center, a nursery, a preschool center, a kindergarten classroom, child
11 development center, a child development home, a child development facility, a child-placing
12 agency, infant care center, or similar such entity. The location of a child-occupied facility as part
13 of a larger structure does not make the entire structure a child-occupied facility. Only the portion
14 of the facility occupied or regularly visited by children under age 6 shall be considered the child-
15 occupied facility.”.

16 (2) Existing paragraphs (1), (1A), (1B), and (1C) are renumbered “(1A)”, “(1B)”,
17 “(1C)”, and “(1D)”, respectively.

18 (b) Section 102(b) (D.C. Official Code § 38-271.02(b)) is amended by adding a new
19 paragraph “(11)” to read as follows:

20 “(11) Not issue a license for a child-occupied facility located within 200 feet of a dry
21 cleaning facility that uses perchloroethylene or n-propyl bromide as a cleaning agent for clothes
22 or other fabrics. The 200-foot restriction shall not apply at a location where a child-occupied
23 facility is applying for renewal of an existing license.”.

1 **SUBTITLE B. WEATHERIZATION FOR LOW-INCOME AND ELDERLY**

2 **HOUSEHOLDS.**

3 Sec. 321. Short title.

4 This subtitle may be cited as the “Low-Income Weatherization Plus Program Amendment
5 Act of 2012”.

6 Sec. 322. Section 210(c)(5) of the Clean and Affordable Energy Act of 2008, effective
7 October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1774.10(c)(5)), is amended as by
8 striking the phrase “\$ 2.375 million for fiscal year 2011” and inserting the phrase “\$ 1 million for
9 fiscal year 2013” in its place.

10 **SUBTITLE C. ENERGY SYSTEM RETROFITS FOR LOW-INCOME AND**
11 **ELDERLY HOUSEHOLDS.**

12 Sec. 331. Short title.

13 This subtitle may be cited as the “Heating System Repair, Replacement, or Tune-up
14 Program Amendment Act of 2012”.

15 Sec. 332. Section 210(c)(7) of the Clean and Affordable Energy Act of 2008, effective
16 October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1774.10(c)(6)), is amended as by
17 striking the phrase \$ 1.073 million for fiscal year 2011” and inserting the phrase “\$ 1 million for
18 fiscal year 2013” in its place.

19 **TITLE IV. FISCAL IMPACT AND EFFECTIVE DATE.**

20 Sec. 401. Fiscal impact statement.

21 The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal
22 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
23 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

1 Sec. 402. Effective date.

2 This act shall take effect following approval by the Mayor (or in the event of veto by the
3 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
4 provided in 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973
5 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia
6 Register.

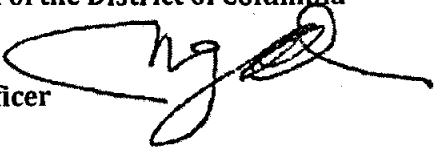
Government of the District of Columbia
Office of the Chief Financial Officer



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.*

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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.

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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 DCMR § 3200 and fine amounts are set in 16 DCMR § 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).

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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, manufacturers, 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 manufacturers 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

MEMORANDUM


TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: April 23, 2012

SUBJECT: Legal Sufficiency Review of Proposed Draft legislation, the "Sustainable DC Act of 2012"
(AE-12-296)

This is to Certify that this Office has reviewed the legislation entitled the "Sustainable DC Act of 2012", and found it to be legally unobjectionable. If you have any questions, please do not hesitate to call me at 724-5524.


Janet M. Robins