

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to the CleanEnergy DC Omnibus Amendment Act of 2018 to extend the timeline for phase-in of smaller buildings into the Building Energy Performance Standards Program implemented by DOEE; to allow DOEE to establish new building energy performance standards every 6 years instead of every 5 years, to clarify language requiring buildings to comply with the building energy performance standards, to provide that the Strategic Energy Management Plan for District buildings shall be delivered by September 30, 2020; and to provide that the rules revising the vehicle excise tax shall be issued by January 1, 2021, and shall be revenue-neutral or revenue-positive.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “CleanEnergy DC Omnibus Emergency Declaration Resolution of 2020”.

Sec. 2. (a) The CleanEnergy DC Omnibus Amendment Act (“the Act”) became law on March 22, 2019. Titles II, III, IV, and V of the Act became applicable when they were funded, on October 1, 2019.

(b) Title III of the Act requires the Department of Energy and Environment (DOEE) to establish the first building energy performance standard by January 1, 2021, for buildings with at least 50,000 square feet of gross floor area. The Act then requires that DOEE establish building energy performance standards for buildings with at least 25,000 square feet of gross floor area by

37 January 1, 2023, and for buildings with at least 10,000 square feet of gross floor area by January  
38 1, 2026. The Act provides that building owners have 5 years to comply with the standard, and  
39 requires DOEE to establish new building energy performance standards for each category of  
40 building size every 5 years.

41 (c) Before DOEE establishes the first standard, required by January 1, 2021, it must  
42 propose, receive public comment on, and finalize rules to implement the Building Energy  
43 Performance Standards program (“BEPS program”). When proposed, the rules proposed must  
44 comport with the statute. Further, DOEE is required to consult with the Building Energy  
45 Performance Standards Task Force (“Task Force”) established in the Act in drafting the rules.  
46 The Task Force will hold its first meeting in December 2019.

47 (d) In reviewing the law in preparation for drafting rules implementing the BEPS  
48 program, DOEE noticed inconsistency within the Act regarding it’s the requirement for buildings  
49 to comply with the building energy performance standard. Further, DOEE determined that the  
50 staggered application of the BEPS program to different categories of building size is inefficient  
51 and likely to waste resources at the agency. DOEE also determined that it is impracticable for the  
52 agency to set a new building performance standard every 5 years, given that buildings have 5  
53 years to comply with the building energy performance standard, and a new standard should  
54 incorporate data from the final year of compliance, which the agency will not receive until  
55 March of the following year. It would be most efficient for all buildings to be on the same  
56 compliance cycle, and setting a new standard every 6 years would allow time for the  
57 incorporation of data from the final year of compliance.

58 (e) Title III of the Act also requires DOEE and the Department of General Services to  
59 deliver a Strategic Energy Management Plan by January 1, 2020. However, as Title III of the Act

60 did not become effective until funding was allocated for it on October 1, 2020, DOEE and the  
61 Department of General Services will be unable to meet this deadline.

62 (f) Title V of the Act requires the Department of Motor Vehicles (DMV) to issue  
63 revenue-neutral rules revising the vehicle excise tax by January 1, 2020. As Title V did not  
64 become effective until funding was allocated for it on October 1, 2020, DMV will be unable to  
65 meet this deadline. Further, in preparing a draft of these rules, DMV and DOEE have determined  
66 that it is exceedingly difficult to guarantee that they will be precisely revenue-neutral, and the  
67 agencies are concerned that this strict requirement could become a basis for challenging the rules  
68 after they are issued.

69 (g) Immediate legislative action is necessary to amend the Act to resolve inconsistencies  
70 and revise the implementation timeline of the BEPS program so DOEE can work with the Task  
71 Force to draft and issue rules that comport with the Act; to allow additional time to deliver the  
72 Strategic Energy Management Plan; and to allow additional time and flexibility in issuing the  
73 rules revising the vehicle excise tax.

74 Sec. 3. The Council of the District of Columbia determines that the circumstances  
75 enumerated in section 2 constitute emergency circumstances making it necessary that the  
76 CleanEnergy DC Omnibus Emergency Amendment Act of 2020 be adopted after a single  
77 reading.

78 Sec. 4. This resolution shall take effect immediately.