


Council of the District of Columbia

MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Chairman Phil Mendelson
FROM: Councilmember Charles Allen 
RE: Request to Agendize Measures for the November 12, 2024 Additional Meeting
DATE: November 6, 2024

I request that the following measures be placed on the agenda for the November 12, 2024 Additional Meeting:

Emergency Legislation

- “Department of Energy and Environment Definitions Clarification Emergency Declaration Resolution of 2024”
- “Department of Energy and Environment Definitions Clarification Emergency Amendment Act of 2024”
- “Department of Energy and Environment Definitions Clarification Temporary Amendment Act of 2024”

The Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; 47 DCR 1091), currently defines the term “Subscriber organization” as “any for-profit or nonprofit entity permitted by District of Columbia law that owns or operates one or more community renewable energy facilities for the benefit of the subscribers.” A primary function of subscriber organizations is to assign energy credits to subscribers who participate in community renewable energy facilities (“CREFs”). Subscription management is an administratively burdensome activity, and solar developers generally prefer to assign the responsibility for subscription management to another entity. In practice, the Department of Energy and Environment (“DOEE”) has been functioning as a subscriber organization for low- to moderate-income District residents, who are subscribers to CREFs through DOEE’s Solar for All program. Uncertainty regarding whether the definition of “subscriber organization” covers a government entity could adversely impact DOEE’s authority to continue performing these administrative functions, and may inhibit other government entities, including the federal government, from performing these functions for future CREFs.

The Residential Housing Environmental Safety Amendment Act of 2020, effective March 16, 2021 (D.C. Law 23-188; 68 DCR 1227), amended the Lead-Hazard Prevention and Elimination Act of 2008, effective March 31, 2009 (D.C. Law 17-381; 56 DCR 1596), to lower the amount of lead needed in paint or other surface coatings to qualify as a “lead-based paint” from one milligram per square centimeter (1.0mg/cm²) to 0.7 milligrams per square centimeter (0.7mg/cm²). However, the parenthetical within the amended definition erroneously uses microgram symbol (“μ”) instead of the correct abbreviation for milligram (“mg”).

Finally, the Zero Waste Omnibus Amendment Act of 2020, effective March 16, 2021 (D.C. Law 23-211; 68 DCR 68), amended the Sustainable Solid Waste Management Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-154; 61 DCR 9971) to define “producer.” Due to

a drafting error, the definition uses the phrase “A person who manufacturers [sic] a . . .” when it should instead read “A person who manufactures a . . .”

This emergency legislation clarifies the definitions of “subscriber organization,” “lead-based paint,” and “producer” to more clearly align with the Council’s intent and agency practice. The emergency legislation is necessary to prevent the misapplication or misinterpretation of several key definitions in the D.C. Code that DOEE relies on when fulfilling its statutory duties or administrating agency programs.

Draft copies of these measures are attached. Please contact Kevin Whitfield, Committee Director, at kwhitfield@dccouncil.gov with any questions.

Permanent Legislation Approved by the Committee

- Bill 25-0801, the “Building Energy Performance Standards Amendment Act of 2024”

The Building Energy Performance Standards Program (“BEPS”) was established pursuant to Title III of the Clean Energy DC Omnibus Amendment Act of 2018, effective March 22, 2019 (D.C. Law 22-257; D.C. Official Code § 8-1772.21), and was created to help meet the District’s sustainability and climate goals laid out in the Sustainable DC Plan. BEPS requires owners of existing buildings in the District to meet energy or emissions-based performance targets during a specified period of time. Existing buildings in the District are divided into three separate compliance cycles based on their square footage. The first cycle of BEPS is currently underway and applies to privately-owned buildings with at least 50,000 square feet of gross floor area and all District-owned or District instrumentality-owned buildings with at least 10,000 square feet of gross floor area. BEPS is administered by the Department of Energy and Environment (“DOEE”).

The Committee Print makes several changes to BEPS in order to improve the administrability of the program and encourage greater compliance from owners’ whose buildings are subject to BEPS. Many of these changes contained in the Print were requested by the BEPS Task Force, which is composed of subject matter experts, building owners, and other important stakeholders, and are discussed in more detail below. Specifically, the Print:

- Amends the second BEPS cycle to start on January 1, 2028, and the third BEPS cycle to start on January 1, 2034;
- Amends the start of benchmark reporting requirements for a building with 10,000 square feet of gross floor area from January 1, 2024 to January 1, 2025;
- Creates a whole-cycle exemption for buildings that are vacant and in financial distress;
- Streamlines the benchmarking process by changing the benchmarking and reporting deadline from April 1 to May 1, requiring third-party verification every 6 years instead of every 3 years
- Requires that DOEE submit a report to the Council by April 1, 2025 analyzing and evaluating the effectiveness of third-party verification;

- Replaces references to “alternative compliance penalty” with “alternative compliance payments”, which will enable the costs of non-compliance to be passed through to commercial tenants, subject to the terms of the lease; and
- Requires DOEE to update regulations to confirm that mechanical and electrical upgrades made to comply with BEPS are exempt from stormwater regulations.

BEPS is one of the foundations of the District’s Climate Action Plan, and improving the energy efficiency of public and private buildings has been projected to reduce energy use by 21% and carbon emissions by more than one million tons annually. The Committee Print will allow the District to make substantial progress towards emissions reductions while making tailored adjustments to improve administrability and ensure compliance.

- Bill 25-0569, the “Pesticide Operations Amendment Act of 2024”

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) “governs the registration, distribution, sale, and use of pesticides in the United States.” The U.S. Environmental Protection Agency (“EPA”) is responsible for certifying applicators unless a state or territory has submitted a State Certification Plan that has been approved by the EPA. The Department of Energy and Environment (“DOEE”) submitted its initial State Certification Plan for the District of Columbia to the EPA on December 14, 2022. The state certification plan included commitments to update the District’s laws to empower the Mayor to establish categories for private applicators. The Mayor and DOEE would, in turn, update the District’s regulations to meet federal requirements.

For background, under current law, the Mayor is only authorized to establish categories and subcategories of commercial pesticide applicators. The bill empowers the Mayor to establish categories and subcategories of private pesticide applicators. This change in the law will bring the District in compliance with FIFRA.

Copies of these measures are attached, and the complete committee reports will be filed later today. Please contact Kevin Whitfield, Committee Director, at kwhitfield@dccouncil.gov with any questions.

cc: Members, Council of the District of Columbia
Office of the Budget Director
Office of the General Counsel
Office of the Secretary