**ENGROSSED ORIGINAL**

A BILL

20-573

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Clean and Affordable Energy Act of 2008 to require the electric and gas utilities to provide building owners with automated electronic access to aggregated consumption data to facilitate energy benchmarking and conservation, and to amend the Retail Electric Competition and Consumer Protection Act of 1999 and the Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004 to clarify related consumer protection provisions; to amend the Green Building Act of 2006 to clarify the responsibility for the transfer of benchmarking data upon the sale of a privately-owned building covered by the act and to designate the party responsible for reporting the benchmarking data for the calendar year in which the sale occurred; to amend chapter 42 of title 28 of the District of Columbia Official Code to authorize the Mayor to approve organizations that offer radon screening, testing, or mitigation services in the District; to require covered employers to provide a transportation benefit program to covered employees; to amend the Healthy Schools Act of 2010 to establish an environmental literacy program and a reporting requirement for the program; to prohibit the sale, use, or provision of expanded polystyrene containers for food service, and to require disposable food service ware provided by food service businesses to be compostable or recyclable; to amend the Sustainable DC Amendment Act Act of 2012 to expand the Mayor's authority to regulate beekeeping, to refine the responsibilities of beekeepers, to enable the Mayor to regulate the management of colony density and distance from property lines and manage colony disposition; to amend the Urban Forest Preservation Act of 2002 to require the payment for removal of special trees at the time of application for a removal permit, and to remove the option of deferred replacement by planting.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sustainable DC Omnibus Amendment Act of 2014".

**TITLE I. JOBS AND ECONOMY.**

**SUBTITLE A. IMPROVING BUILDING BENCHMARKING DATA THROUGH DIRECT ELECTRONIC REPORTING.**

Sec. 101. The Clean and Affordable Energy Act of 2008, effective October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1773.01 *et seq*.), is amended as follows:

(a) Section 101 (D.C. Official Code § 8-1773.01) is amended by adding a new paragraph (4A) to read as follows:

"(4A) "ENERGY STAR Portfolio Manager" means the ENERGY STAR Portfolio Manager tool developed by the Environmental Protection Agency, or any alternatives approved by the Mayor that rates the performance of a qualifying building, relative to similar buildings nationwide, accounting for the impacts of year-to-year weather variations, building size, location, and several operating characteristics, using the Environmental Protection Agency's national energy performance rating system.".

(b) Section 207 (D.C. Official Code § 8-1774.07) is amended by adding a new subsection (f) to read as follows:

"(f)(1) The electric company shall undertake the following actions to provide a building owner with easier and more complete access to energy consumption data needed to promote energy conservation and comply with the benchmarking and reporting requirements in section 4(c) of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.03(c)):

"(A) Upon written or secure electronic authorization of a building owner or the owner's authorized agent, aggregate the energy consumption of all meters identified as being in the building and provide the data, separated by month, as long as the following conditions are met:

"(i) Sufficient information, including building address, meter numbers, or account numbers, is provided to identify the building and meters;

"(ii) At least 5 customer accounts are being aggregated, so as to obscure any customer-specific information; and

"(iii) No customer account, other than an account registered to the building owner making the request, represents more than 80% of the total energy consumption for the building;

"(B) Provide aggregate data for at least 2 years before the initial request and automatically update the monthly data on an ongoing basis at least once every 45 calendar days;

"(C) Provide an online portal for a building owner to use to request the provision and transfer of aggregate account data, or individual customer account data the building owner is duly authorized to access, to manage requests made, and to discontinue active requests; and

"(D) Upload requested electric consumption data automatically on an ongoing basis, at least once every 45 calendar days, to the requestor's ENERGY STAR Portfolio Manager account, as well as make the data available for an account holder to download in a common format.

"(2) Access to consumption data under this section shall be subject to any rules and regulations the Commission has adopted or may choose to adopt, where the rules do not conflict with this section.".

(c) Section 208 (D.C. Official Code § 8-1774.08) is amended by adding a new subsection (d) to read as follows:

"(d)(1) The gas company shall undertake the following actions to provide a building owner with easier and more complete access to energy consumption data needed in order to promote energy conservation and comply with the benchmarking and reporting requirements in section 4(c) of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.03(c)):

"(A) Upon written or secure electronic authorization of a building owner or the owner's authorized agent, aggregate the energy consumption of all meters identified as being in the building and provide the data, separated by month, as long as the following conditions are met:

"(i) Sufficient information, including building address, meter numbers, or account numbers is provided to identify the building and meters;

"(ii) At least 5 customer accounts are being aggregated,; and

"(iii) No customer account, other than an account registered to the building owner making the request, represents more than 80% of the total energy consumption for the building;

"(B) Provide aggregate data for at least 2 years before the initial request and automatically update the monthly data on an ongoing basis at least once every 45 calendar days;

"(C) Provide an online portal for a building owner to use to request the provision and transfer of aggregate account data, or individual customer account data the building owner is duly authorized to access, to manage requests made, and to discontinue active requests; and

"(D) Beginning no later than January 1, 2018, the gas company shall upload requested consumption data automatically on an ongoing basis, at least once every 45 calendar days, to the requestor's ENERGY STAR Portfolio Manager account, as well as make the data available for an account holder to download in a common format.

"(2) Access to consumption data under this section shall be subject to any rules and regulations the Commission has adopted or may choose to adopt, where the rules do not conflict with this section.".

Sec. 102. Section 107(a) of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1507(a)), is amended as follows:

(a) Paragraph (2) is amended to read as follows:

"(2) This restriction shall not apply to:

"(A) Lawful disclosures for bill collection or credit rating reporting purposes; or

"(B) Lawful disclosures to a building owner about the energy consumption of a non-residential tenant of the building.".

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

"(3) Aggregated consumption data may be provided under the following circumstances:

"(A) At least 5 customer accounts are being aggregated;

"(B) No single customer account represents more than 80% of the total aggregated energy consumption; and

"(C) No individual customer-identifying information is included, unless:

"(i) The customer-identifying information is supplied by the person requesting the consumption data; and

"(ii) The person requesting the consumption data owns the building for which the consumption data is requested.".

Sec. 103. Section 12(a)(1)(D) of the Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code § 34-1671.11(a)(1)(D)), is amended by striking the phrase "reporting purposes;" and inserting the phrase "reporting purposes or a lawful disclosure about the energy consumption of a non-residential tenant to the tenant's building owner; provided, that disclosure of aggregated consumption data to the owner of the building for which the data is requested shall be permissible if at least 5 customer accounts are aggregated and no single customer account represents more than 80% of the total aggregated energy consumption;" in its place.

**SUBTITLE B. ASSISTING BUILDING OWNERS BY CLARIFYING RESPONSIBILITY FOR BENCHMARKING DATA.**

Sec. 111. Section 4(c)(2) of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.03(c)(2)), is amended by adding a new subparagraph (E) to read as follows:

"(E) If ownership of a building covered by this paragraph is transferred, the seller shall provide the buyer with information necessary for the buyer to timely report benchmarking data for the full reporting year in which the transfer occurred. The buyer shall submit the benchmarking data to DDOE by April 1 of the year after the building is transferred.".

**TITLE II. HEALTH AND WELLNESS.**

Sec. 201. Chapter 42 of title 28 of the District of Columbia Official Code is amended as follows:

(a) Section 28-4201(a) is amended to read as follows:

"(a) No person or company shall conduct or offer to conduct radon screening, testing, or mitigation in the District for a fee unless the person who performs the service has been:

"(1) Listed as proficient by the Environmental Protection Agency to offer radon screening, testing, or mitigation services; or

"(2) Has received a certificate of proficiency from an organization approved by the Mayor to offer radon screening, testing, or mitigation services.".

(b) Section 28-4202(a) is amended as follows:

(1) Strike the phrase "issue proposed rules" and inserting the phrase "promulgate rules to implement this chapter, including rules" in its place.

(2) Strike the second sentence in its entirety.

## TITLE III. EQUITY AND DIVERSITY.

### SUBTITLE A. REDUCING SINGLE OCCUPANCY VEHICLE USE BY ENCOURAGING TRANSIT BENEFITS.

Sec. 301. Definitions.

For the purposes of this subtitle, the term:

(1) "Covered employer" means an employer with 20 or more employees.

(2) "Employee" shall have the same meaning as set forth in the Minimum Wage Act Revision Act of 1992 (D.C. Official Code § 32-1002(3)).

(3) "Employer" shall have the same meaning as set forth in section 3(3) of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1002(3)).

(4) "Transit pass" shall have the same meaning as set forth in section 132(f)(5)(A) of the Internal Revenue Code, approved July 18, 1984 (P.L. 98-369; 26 U.S.C. § 132(f)(5)(A)) ("Internal Revenue Code"), and shall include transit passes for travel by bus, streetcar, or train by the Washington Metropolitan Area Transit Authority, Maryland Area Regional Commuter, Virginia Railway Express, or the National Railroad Passenger Corporation (Amtrak).

(5) "Vanpool" means a "commuter highway vehicle" within the meaning of section 132(f)(5)(B) of the Internal Revenue Code.

Sec. 302. Transportation benefit program.

(a) By January 1, 2016, a covered employer shall provide at least one of the following transportation benefit programs to its employees:

(1) A pre-tax election transportation fringe benefits program that provides commuter highway vehicle, transit, or bicycling benefits consistent with section 132(f)(1)(A),(B), and (D) of the Internal Revenue Code at benefit levels at least equal to the maximum amount that may be deducted for those programs from an employee's gross income pursuant to section 132(f)(2) of the Internal Revenue Code;

(2) An employer-paid benefit program whereby the employer supplies, at the election of the employee, a transit pass for the public transit system requested by each covered employee or reimbursement of vanpool or bicycling costs in amount at least equal to the purchase price of a transit pass for an equivalent trip on a public transit system; or

(3) Employer-provided transportation at no cost to the covered employee in a vanpool or bus operated by or for the employer.

(b) A covered employer who fails to offer at least one transportation benefit program as required by this section shall be subject to civil fines and penalties pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

Sec. 303. Rules.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may promulgate rules to implement the provisions of this subtitle. As of January 1, 2017, the Mayor may expand

through rulemaking the definition of "covered employer" in section 301(1) to include employers with fewer than 20 employees.

**SUBTITLE B. ENCOURAGING ENVIRONMENTAL STEWARDSHIP THROUGH EDUCATION AND OUTREACH.**

Sec. 311. The Healthy Schools Act of 2010, effective July 17, 2010 (D.C. Law 18-209; D.C. Official Code § 38-825.01 *et seq*.), is amended as follows:

(a) Section 102 (D.C. Official Code § 38-821.02) is amended as follows:

(1) Subsection (c) is amended by adding a new paragraph (8) to read as follows:

"(8) To support the development and implementation of an Environmental Literacy Program established in section 502.".

(2) Subsection (g) is amended by striking the phrase "subsection (c)(6) and (7) of this section" and inserting the phrase "subsection (c)(6), (7), and (8) of this section" in its place.

(b) Section 502 (D.C. Official Code § 38-825.02) is amended to read as follows:

"Sec. 502. Environmental Literacy Program.

"(a) An Environmental Literacy Program is established within the Office of the State Superintendent of Education. The Environmental Literacy Program shall:

"(1) Coordinate the efforts of the District Department of the Environment, the District of Columbia Public Schools, the Public Charter School Board, the Office of the State Superintendent of Education, the State Board of Education, the University of the District of Columbia, the Department of Parks and Recreation, the Department of General Services, and the

Department of Employment Services to triennially develop an environmental literacy plan for public schools, public charter schools, and participating private schools;

"(2) Establish and convene an Environmental Literacy Advisory Committee, composed of community organizations, District government agencies, and other interested persons;

"(3) Collect data on the location and types of environmental education programs in public schools, public charter schools, and participating private schools;

"(4) Provide environmental education guidance and technical assistance to public schools, public charter schools, and participating private schools; and

"(5) Provide training, support, and assistance for environmental literacy programs in public schools, public charter schools, and participating private schools.

"(b) The environmental literacy plan shall, at minimum, describe the following:

"(1) Relevant teaching and learning standards adopted by the State Board of Education;

"(2) Professional development opportunities for teachers;

"(3) Suitable metrics to measure environmental literacy;

"(4) Suitable methods to increase environmental literacy;

"(5) Governmental and nongovernmental entities that can assist schools in the achievement of those goals; and

"(6) A proposed implementation method for the plan.

"(c) One year after the effective date of this act and triennially thereafter, the Environmental Literacy Program shall issue a report about the state of environmental education in the District of Columbia, plans for expansion, and recommendations for improving the program.".

(c) Section 601(b)(2) (D.C. Official Code § 38-826.01(b)(2)), is amended as follows:

(1) Subparagraph (B) is amended by striking the word "and".

(2) Subparagraph (C) is amended by striking the period and inserting the phrase "; and".

(3) A new subparagraph (D) is added to read as follows:

"(D) Developing and implementing an Environmental Literacy Program.".

**TITLE IV. CLIMATE AND THE ENVIRONMENT.**

**SUBTITLE A. REDUCING WASTE AND PROTECTING THE DISTRICT'S WATERWAYS THROUGH POLLUTION PREVENTION.**

Sec. 401. Definitions.

For the purposes of this subtitle, the following terms shall mean:

(1) "Disposable food service ware" means containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives, napkins, and other items that are designed for one-time use for beverages, prepared food, or leftovers from meals prepared by a food service business. The term "disposable food service ware" shall not include items composed entirely of aluminum.

(2) "Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a

number of techniques, including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(3) "Expanded polystyrene food service products" means food containers, plates, hot and cold beverage cups, meat and vegetable trays, egg cartons, and other products made of expanded polystyrene and used for selling or providing food.

(4) "Food service business" means full-service restaurants, limited-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, supermarkets, grocery stores, vending trucks or carts, food trucks, business or institutional cafeterias, including those operated by or on behalf of District departments and agencies, and other businesses selling or providing food within the District for consumption on or off the premises.

Sec. 402. Prohibition on use of expanded polystyrene food service products.

(a) By January 1, 2016, no food service business shall sell or provide food in expanded polystyrene food service products, regardless of where the food purchased at the food service business will be consumed.

(b) Subsection (a) of this section shall not apply to food or beverages that were filled and sealed in expanded polystyrene containers before a food service business received them.

Sec. 403. Compostable or recyclable disposable food service ware required.

(a) A District facility, agency, and department using disposable food service ware shall use compostable or recyclable disposable food service ware unless there is no suitable affordable compostable or recyclable product available as determined by the Mayor in accordance with this subtitle; provided, that disposable food service ware supplies already purchased as of the

effective date of this subtitle may be used until the supplies are exhausted or until January 1, 2017, including disposable food service ware supplies that the District is obligated to purchase under any contracts in force as of the effective date of this subtitle.

(b) A District contractor and lessee using disposable food service ware shall use compostable or recyclable disposable food service ware unless there is no suitable affordable compostable or recyclable product available as determined by the Mayor in accordance with this subtitle; provided, that disposable food service ware supplies already purchased as of the effective date of this subtitle may be used until the supplies are exhausted or until January 1, 2017, including disposable food service ware supplies that the District contractor or lessee is obligated to purchase under any contracts in force on the effective date of this subtitle.

(c) By ~~January 1, 2018~~ January 1, 2017, no food service business shall sell or provide food or beverages, for consumption on or off premises, in disposable food service ware unless the disposable food service ware is compostable or recyclable; provided, that this subsection shall not apply to prepackaged food or beverages that were filled and sealed outside of the District before a food service business received them.

Sec. 404. Recyclable and compostable food service ware list.

No later than 180 days after the effective date of this section, the Mayor shall make public a list of vendors offering affordable compostable or recyclable disposable food service ware products. The Mayor shall update this list annually for at least 5 years after it is first published.

Sec. 405. Exemptions and waiver.

(a) If the Mayor determines that there is no available affordable compostable or recyclable alternative to a disposable food service ware item, this item shall be listed on an exemption list and made available to the public. Sections 402 and 403 shall not apply to a food service ware item on the exemption list or for the first 6 months after an item is removed from the list. The Mayor shall review the exemption list annually to determine whether any items should be removed because an affordable compostable or recyclable alternative has become available.

(b) The Mayor may, consistent with this subtitle, waive any specific requirements of sections 402 and 403 for a period of up to one year if a food service business demonstrates that strict application of the requirements would create an undue hardship or practical difficulty not generally applicable to other food service businesses in similar circumstances.

Sec. 406. Rules; enforcement.

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

(b) Civil fines and penalties may be imposed as sanctions for an infraction of the provisions of this subtitle or any rules promulgated under the authority of this subtitle, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

(c) In addition to the enforcement authority provided to the Mayor under the Civil Infractions Act, the Mayor may seek injunctive relief or other appropriate remedy in any court of competent jurisdiction to enforce compliance with the provisions of this subtitle.

**SUBTITLE B. PROMOTING URBAN AGRICULTURE THROUGH PROGRAM IMPROVEMENT.**

Sec. 411. The Sustainable DC Amendment Act of 2012, effective April 20, 2013 (D.C. Law 19-262; D.C. Official Code § 8-1825.01 *et seq.*), is amended as follows:

(a) Section 212 (D.C. Official Code § 8-1825.02) is amended as follows:

(1) A new paragraph (7A) is added to read as follows:

"(7A) "Director" means the Director of the District Department of the Environment.

(2) Paragraph (8) is amended by striking the word "intended" and inserting the word "used" in its place.

(3) Paragraph (9) is amended to read as follows:

"(9) "Honey bee" means *Apis mellifera* or another species designated as suitable for an urban environment by the Director of the District Department of the Environment.

(4) Paragraph (10) is amended by striking the phrase "Multi-unit" and inserting the phrase "Multi-unit building" in its place.

(5) Paragraph (11) is amended by striking the phrase "private entity" and inserting the phrase "legal entity" in its place.

(6) Paragraph (12) is repealed.

(b) Section 213 (D.C. Official Code § 8-1825.03) is amended by striking the period and inserting the phrase "and any regulations promulgated pursuant to this act." in its place.

(c) Section 214 (D.C. Official Code § 8-1825.04) is amended to read as follows:

"Sec. 214. Responsibilities of beekeepers.

"(a) A colony kept in the District shall be registered annually with the Department.

"(b) No person shall bring into the District a colony or portion of a colony, bees on combs, empty used combs, used hives, or other used apiary appliances without complying with the procedures established by the Department in accordance with this act.

"(c) A colony may not be established in a multi-unit building without written permission from the property manager or owner.

"(d) A hive must be kept and maintained to prevent overcrowding and deter swarming according to procedures established by the Department through rulemaking.

"(e) A beekeeper shall be responsible for the remediation of bee swarms and nuisance conditions. In the event a beekeeper fails to fulfill this obligation, the owner of the property on which a hive is located shall be responsible for remediating ~~these conditions~~these conditions, and the beekeeper shall reimburse the property owner for the costs incurred by the remediation.".

(d) Section 215 (D.C. Official Code § 8-1825.05) is repealed.

(e) Section 216 (D.C. Official Code § 8-1825.06) is repealed.

(f) Section 217(a) (D.C. Official Code § 8-1825.07(a)) is amended to read as follows:

"(a) The Department shall establish procedures and may take measures to control the spread of bee diseases and may order a beekeeper to take measures to control the spread of bee diseases.".

(g) Section 218 (D.C. Official Code § 8-1825.08) is repealed.

(h) Section 219 (D.C. Official Code § 8-1825.09) is amended as follows:

(1) Subsection (a) is amended by inserting the following sentence at the end: "The rules may establish fees necessary to implement the provisions of this act.".

(2) Subsection (d) is repealed.

(3) A new subsection (e) is added to read as follows:

"(e) The Mayor may require reimbursement for the District's costs resulting from services, including inspections, testing, storage, and transportation of hives or bees, or other reasonable costs or fees incurred in implementation of this act or regulations promulgated pursuant to this act.".

**SUBTITLE C. GROWING THE URBAN CANOPY THROUGH ENHANCED TREE MANAGEMENT.**

Sec. 421. Section 104 of The Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.04), is amended as follows:

(a) Subsection (b) is amended as follows:

(1) Paragraph (2) is amended by striking the semicolon and inserting the phrase "; or" in its place.

(2) Paragraph (3) is amended by striking the phrase "; or" and inserting a period in its place.

(3) Paragraph (4) is repealed.

(b) Subsection (c) is repealed.

**TITLE V. FISCAL IMPACT STATEMENT, APPLICABILITY, AND EFFECTIVE DATE.**

Sec. 501. Fiscal impact statement.

The Council adopts the fiscal impact statement contained in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §l-206.02(c)(3)(2001)).

Sec. 502. Applicability.

(a) Title I shall apply as of January 1, 2015.

(b) Title II shall apply as of the effective date of this act.

(c) Title III, Subtitle A, section 301, 302(a), and 303 shall apply as of the effective date of this act.

(d) Title III, Subtitle A, section 302(b) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

(e) Title III, Subtitle B, shall apply as of the effective date of this act.

(f) Title IV, Subtitle A, sections 401, 402, and 406 shall apply as of the effective date of this act.

(g) Title IV, Subtitle A, sections 403, 404, and 405 shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

(h) Title IV, Subtitles B and C shall apply as of the effective date of this act.

Sec. 503. Effective date.

This act shall take effect after approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)(2001)), and publication in the District of Columbia Register.