

June 28, 2021

Montgomery County Council President Tom Hucker
100 Maryland Ave
Rockville, MD 20850

Comments from the Montgomery County Climate, Energy, and Air Quality Advisory Committee regarding the proposed Building Energy Performance Standard for commercial and multifamily buildings

Montgomery County's Climate, Energy, Air Quality, and Advisory Committee ["the Committee"], an advisory committee to the Montgomery County, MD County Executive and County Council, is offering its recommendations regarding the proposed Building Energy Use Benchmarking and Performance Standards (BEPS) legislation. The Committee supports passage of the proposed BEPS bill but recommends several key changes to ensure it achieves its stated aims. Our recommended changes include:

- 1) Strengthening the process to establish final and interim standards to ensure they align with the County's Climate Action Plan (CAP);
- 2) Introducing benefits for exceeding final standards and early compliance with final standards; and
- 3) Ensuring that penalties are sufficient to achieve compliance.

Expanded benchmarking

The Committee supports the expansion of the current benchmarking law to now cover 25,000 sq. ft. gross area and greater, including multifamily and mixed-use buildings. This expansion will be critical to implementing the county's Building Energy Performance Standards (BEPS) in alignment with the Climate Action Plan. Multifamily and mixed-use buildings comprise a significant share of the building space in the county, and therefore must contribute to emissions reductions in significant ways.

Alignment with CAP

The Committee recommends that the legislation incorporate mechanisms to modify final standards should it be determined they are no longer aligned with the CAP. The legislation, corresponding regulation, and any other implementation tools should be reviewed (and if necessary modified) after the CAP is finalized, and periodically after that, to ensure that these remain sufficient to achieve the County's CAP goals.

Benefits for going beyond compliance

In addition, the Committee recommends introducing added incentives for buildings to achieve early compliance or exceed their final standards. As the county's CAP report has assessed, the county will still have about 15-20% of emissions remaining even if it implements all actions as defined in the CAP (pgs. 65-66). Therefore, the BEPS legislation may achieve further gains beyond those assumed in the CAP by encouraging buildings to comply with interim and final standards earlier than stated deadlines. More importantly, the Committee suggests establishing fiscal or other incentives to encourage buildings to exceed their final standards.

Implementation, oversight and compliance

The Committee supports the mechanisms proposed for oversight and implementation of the proposed legislation, including creation of a BEPS committee to advise and oversee the county's efforts. The Committee also supports the development of Building Performance Improvement Plans (BPIP) as the mechanism to address non-compliant buildings. However, the Committee strongly recommends enhancing potential penalties for non-compliance beyond a Class A violation. We understand that state law may prevent the county from levying more substantial penalties, but we anticipate that many building owners and operators may opt to absorb the penalty rather than make the investments necessary to comply with their respective standards. If the county cannot work around state limitations, the Committee recommends that Council explore alternative mechanisms to enforce compliance.

One such mechanism is to pass an increase in the fuel-energy tax for covered commercial buildings and coupling with an associated compliance or green building tax credit that offsets the higher tax. Compliant buildings, those that have met interim targets or have submitted Building Performance Improvement Plans may be eligible to apply the credit while non-compliant buildings will not be eligible to claim the credit. Funds collected via the fuel-energy tax could be targeted towards Low-Moderate Income properties and initiatives to ensure equitable implementation of the BEPS law, or else could be applied towards financial incentives to encourage non-compliant buildings to make the necessary improvements to their facilities.

Finally, as stated in the financial impact statement, implementation of the law will require additional resources and new FTE positions. The draft BEPs legislation lays out a regulatory framework and timeline for achieving meaningful progress. Much of the work to implement BEPS must be done early in the timeline. Because the FY22 budget did not include a single new position to implement BEPS, it is critical that the FY23 budget provide needed staffing and funding for BEPS.

The BEPS timeline requires that:

- By June 1, 2022, new smaller buildings and large multifamily buildings would need to start benchmarking energy use; and DEP would issue regulations that establish building groups; numerical performance standards for each building type; and requirements related to a Building Performance Implementation Plans, etc.

- By January 1, 2023, the first stage of implementing BEPS would begin for nearly a thousand buildings. During this period, outreach, training, and advice to the building community would be critical.

Currently, all the implementation steps outlined above fall to two energy managers who already staff all the DEP building energy responsibilities and one position previously budgeted for but not yet hired. The Fiscal Impact Statement for the BEPS legislation recommends a total of seven positions to support the BEPS program. Washington DC, which has a similar BEPS plan, currently has 8 staff assigned to this program. Therefore, when the FY23 budget comes before the Council, it is critical that funding for adequate staff be authorized.

In addition, it is important that there be adequate operating funds in the FY23 budget to implement BEPS. The Fiscal Impact Statement for the BEPS legislation states that operating expenses would be needed to cover development and maintenance of a database, including a portal for building managers; general outreach mailings, a website etc.; technical assistance to property owners; and support for engineering analysis to implement BEPS and evaluate improvement plans. An effective program will require funding commensurate with these requirements.