



ARCHDIOCESE OF WASHINGTON

Archdiocesan Pastoral Center: 5001 Eastern Avenue, Hyattsville, MD 20782-3447
Mailing Address: Post Office Box 29260, Washington, DC 20017-0260
301-853-4500 TDD 301-853-5300

Montgomery County Council Public Hearing – July 20, 2021

Bill 16-21, Environmental Sustainability - Building Energy Use Benchmarking and Performance Standards – Amendments

Written Testimony of the Catholic Archdiocese of Washington

The Roman Catholic Archdiocese of Washington (ADW) hereby submits the following comments on Bill 16-21, Environmental Sustainability - Building Energy Use Benchmarking and Performance Standards - Amendments (BEPS).

ADW supports the general intent of reducing energy usage; however, there are concerns that the Council has not taken the steps necessary to fully consider the unique circumstances of houses of worship and private religious schools in our communities.

Despite their substantial stake in the BEPS law, houses of worship and non-public schools were largely not involved in the formulation of the county action plans and have received very little consideration in Bill 16-21. In addition, the proposed Building Performance Improvement Board is deficient in that it fails to include a dedicated seat for these entities.

Finally, it is unclear that the County has the legal authority to pass such a comprehensive bill, including penalties, in light of federal and state preemption.

Therefore, and for the reasons further stated below, ADW submits the following specific testimony:

1) ADW and its Locations in the County will be Substantially Affected by BEPS.

In these comments on the BEPS bill, ADW offers both general principles for the Council's consideration and the concerns of a stakeholder. ADW is the institutional component of the Catholic Church in the Washington area, including Montgomery County. ADW also has a considerable stake in the proposed BEPS law as a substantial property owner in the County, as would be expected since ADW is the largest religious, educational and charitable non-profit organization in Montgomery County. ADW includes 36 separately-operated parishes and 31 schools and early learning centers in the County. Many of the students and people that ADW serves in its schools and ministries come from under-served and under-resourced communities in the County.

“In her dialogue with the State and with society, the Church does not have solutions for every particular issue,” Pope Francis explains. “Together with the various sectors of society, she supports those programs which best respond to the dignity of each person and the common good. In doing this, she proposes in a clear way the fundamental values of human life and convictions which can then find expression in political activity” (*Evangelii Gaudium*, 241).

ADW and the Catholic Church around the world have answered the call of Pope Francis’ 2015 encyclical, *Laudato Si’* (“On Care for Our Common Home”), which calls for “swift and unified *global* action” to combat and end climate change, pollution, environmental degradation, overconsumption, and waste, including reducing the consumption of non-renewable energy and replacing fossil fuels with renewable energy sources. Therefore, as a Catholic institution, ADW supports the goal of reducing the energy consumption of buildings and levels of pollution (*Laudato Si’*, 180).

Laudato Si’ also speaks of the need for an “integral ecology,” recognizing that everything is interconnected and cautioning that interventions to resolve a problem do not have an adverse effect in other areas (*Id.*, 34, 137). Care should be taken then to assess the full *social* environmental impact of any BEPS requirements in addition to the impact on the natural environment, such that the costs do not end up creating inequities or otherwise harming human dignity and quality of life (*Id.*, 182-84). For example, disadvantaged persons and the non-profit entities that serve them should not bear a disproportionate burden or costs that for-profit businesses can afford to pay, but they cannot. The Stakeholder Recommendation Report and the Montgomery County Climate Action Plan both recognize these considerations, but a much greater engagement is needed.

Despite limited resources, ADW parishes and schools in the County have done their part to respond to the environmental call to action. The majority of ADW’s parishes and schools have elected to power their facilities with 100% renewable energy. In 2019, the Catholic Charities of the ADW constructed and dedicated what is now the largest solar array nearby in Washington, D.C. Further, some ADW parishes and schools with the resources to do so have undertaken stormwater management and energy savings projects at their facilities, such as LED lighting and HVAC refits, with such investments providing the additional financial benefit of reduced energy costs.

ADW not only sees the need, but has been a proactive leader in caring for our common home. However, the parishes and schools within ADW are non-profit entities that depend almost entirely on voluntary contributions for their capital and operating expenditures. Therefore, there are practical limits on what can be done without taking away funds from ADW’s primary mission of serving people.

2) Consideration for Religious Stakeholders and Financial Concerns for Religious Nonprofits and Schools.

It does not appear that consideration was given for the unique characteristics of religious non-profits given during the drafting of Bill 16-21. Notably (and without mention in the BEPS bill or attendant data), houses of worship do not use as much energy as office buildings, retail, or residential buildings that consume energy seven days a week, throughout the day and night. When

crafting its similar BEPS program (Local Law 97, codified at NYC Administrative Code § 28-320.1, *et seq*), the New York City government (NYC) researched and published data showing the breakdown of energy use by property type. See <https://council.nyc.gov/data/green/>. NYC found that only storage facilities emit less greenhouse gases than churches, explaining that “these spaces are not occupied most of the time, so don’t have the same energy needs as other buildings.” NYC’s data demonstrates that houses of worship contribute less than 1% of the share of greenhouse gas emissions, as compared to the 84% share produced by residential, business, hospital, institutional and hotel buildings.

NYC’s BEPS program exempts houses of worship, and all “real estate owned by any religious corporation” from the standards requirements. Instead, along with rent-controlled housing, houses of worship and other buildings owned by a religious corporation are provided the option of a series of prescriptive measures, and are not subject to financial penalties. See NYC Administrative Code §§ 28-320.1 - 28-320.3.¹ NYC’s exemption of religious-owned property is important: it respects the unique and reduced energy use of houses of worship, and accommodates the autonomy guaranteed to houses of worship by the Establishment Clause under the First Amendment of the Constitution. Unlike NYC, it does not appear that Montgomery County has published any research regarding the unique energy consumption of houses of worship.²

Moreover, we are not aware of the County reaching out to ADW on behalf of its dozens of locations prior to drafting this bill, or regarding the data in the Stakeholder Recommendation Report, published September, 2020, as houses of worship and non-public schools appear to have been overlooked as stakeholders. And the proposed Building Performance Improvement Board members do not include or even mention houses of worship, religious organizations, or non-public schools.

Unfortunately, Bill 16-21 does not include separate consideration of houses of worship and non-public K-12 schools. Thus, there is great concern that houses of worship and non-public K-12 schools will be inappropriately joined together with commercial property. While a Class A penalty may present no problem for a commercial property owner, even that relatively modest penalty would be quite onerous for religious non-profit organizations that devote their resources to serving their communities.

Many non-profit facilities and schools in the County – particularly those that serve minority and underprivileged communities – already face substantial financial challenges, and cannot afford costly upgrades. For example, while ADW’s parishes’ and schools’ land holdings have value, like many non-profit organizations, each has very limited financial resources. These churches and schools use their sparse resources for ministry and for critical service in their communities. Unlike for-profit and government property owners, religious and non-profit property owners cannot rely

¹ The St. Louis BEPS program also provides a separate compliance cycle path for houses of worship and affordable housing buildings.

on tenants or tax revenue to diffuse the cost of upgrades and penalties. Instead, churches and non-profits rely on voluntary contributions from their community.

Regardless of the low share of energy consumption by religious properties, under the bill, houses of worship and schools in the County will be graded against each other for their BEPS, so that at least half will at all times face the onerous cost of building upgrades, compliance, and penalties. Even further, the County's Stakeholder Recommendation Report suggests that the County seek to amend Md. Code Ann. Local Gov't. § 10-202(b)) so that the County could penalize property owners, including religious non-profits, above \$1,000. This would not be equitable.

3) Concerns Regarding the County's Legal Authority

Notwithstanding ADW's support for the goal of reducing energy use and carbon emissions, it shares the preliminary questions and concerns of others as to whether the County even has the legal authority to implement building energy performance standards, especially with penalties for noncompliance. However, given the interstate nature of the issues of power generation, purchase, and consumption, and in light of federal and state preemption issues,³ it is not clear that the County has authority to enact such legislation. Further, it should be clarified whether the County intends to pursue and has the authority to pursue expanded penalties as an enforcement mechanism.

4) The Building Performance Improvement Board Should be Expanded, with Specific Membership for Representatives of Faith-Based Organizations and Non-Public Schools.

It is critical for the success of this program that religious non-profits and non-public schools are represented and included in the formation of the BEPS program. For one thing, faith organizations offer a unique and needed perspective on the stewardship of the world that has been entrusted to humanity. Representing all Catholic churches and schools in the County, the Archdiocese of Washington in particular is a substantial stakeholder; the ADW also shares the goal of ensuring the reduction of greenhouse gases from County buildings. Therefore, the list of the proposed Building Performance Improvement Board members, at 18A-42A(b), should be revised and expanded to 20 seats to expressly include (1) Houses of Worship; and (2) Non-public Schools.

5) Like NYC, Bill 16-21 Should be Revised to Implement Specific Standards for Religious Property Owners.

³ The Maryland General Assembly has decreed that greenhouse gas emissions reductions should be accomplished "by using practical solutions that are already at the State's disposal," and that regulation of greenhouse gas emissions is most effective when implemented on a national and international level (MD Env. Code § 2-1201). Furthermore, the Maryland Department of the Environment has express jurisdiction over emissions into the air and ambient air quality in the State. MD Env. Code § 2-103(b).

As discussed above, religious property owners present a substantially reduced share of energy consumption and greenhouse gas emission compared to other property types, but at the same time, face financial burdens compared to for-profit building types. They cannot pass on the costs of compliance. They rely on donations. Moreover, religious property owners are owed autonomy guaranteed to houses of worship by the Establishment Clause under the First Amendment of the Constitution, such that any laws that interfere with that autonomy are likely to result in litigation regarding County overreach. Therefore, assuming arguendo the County's legal authority, Bill 16-21 should be revised to provide the following measures for religious non-profits, including nonpublic schools:

1. Provide the choice between performance standards or by meeting a list of established prescriptive measures, and the exemption from penalties applied to other for-profit property types. In addition, we propose the following measures:
 - a. Separate definition for "Houses of Worship" - "The real estate owned by any religious corporation and used for a religious purpose."
 - b. Resources and Relief for Non-Profit Property Owners:
 - i. Non-profit property owners have limited resources to invest in upgrades or for the purpose of reducing energy consumption. Moreover, unlike commercial properties and housing units, non-profit property owners do not have multiple tenants at one facility location over which to spread the costs of compliance or penalties. In order to avoid disproportionate harm to non-profits, the proposed regulations should include relief for non-profit property owners. Alternatively, a new program should be established to provide relief for non-profits.
 - ii. A new program should be established that provides resources for religious non-profits, including houses of worship and K-12 schools, to allow them to invest in energy-efficiency projects at their facilities. Such resources may include:
 1. Zero interest loans for energy;
 2. Subsidies for the installation of building energy-efficiency projects (including solar, HVAC, lighting);
 3. Tax incentives;
 4. Free building energy assessments/consultations/technical assistance;
 5. Waiver of compliance for next cycle.
 - c. Penalties under should be eliminated or substantially reduced as to non-profits property owners, in lieu of the incentive structure, above.
 - d. A new provision should be added that modifies and "raises" the BEPS standard for property owned by non-profits.
 - i. For example, the standard shall be marked at 80% or 90% of the ENERGY STAR score or Source EUI benchmark for other buildings of that type, as opposed to 50%.

- e. Non-profit property owners should have the option of choosing between the least restrictive of the national median or local median BEPS standard.

Conclusion.

ADW supports the goal of reducing energy consumption and reducing greenhouse emissions. However, ADW has concerns about this specific BEPS proposal in Bill 16-21. Aside from the preliminary and overriding questions about the legal authority to implement binding standards, the process would benefit greatly by broader involvement of stakeholders, specifically the inclusion of faith-based organizations and non-public schools. Moreover, any intervention must be accomplished in an equitable and fair way that does not harm the ability of such entities to serve the community, particularly the underprivileged.

Submitted by:
Andrew Rivas
Archdiocese of Washington
rivasa@adw.org