

Hon. Thomas Hucker  
President, Montgomery County Council  
100 Maryland Avenue, 6<sup>th</sup> Floor  
Rockville, MD 20850

**Re: Bill 16-21 - Building Energy Use Benchmarking - Performance Standards**

Dear Chair Anderson and Planning Commissioners,

The Maryland Building Industry Association is submitting testimony in reference to Bill 16-21 – Building Energy Use Benchmarking - Performance Standards. Bill 16-21 would expand the number of buildings covered by benchmarking requirements, while amending certain definitions and establishing energy performance standards for covered buildings with certain gross floor area, the bill would also create a Building Performance Improvement Board to oversee implementation of the requirements and monitor the benchmarking standards.

We would first like to acknowledge the hard work of the Department of Environment and county staff on crafting this legislation. MBIA and its members are in full support of creating new policies that allow building types to operate as efficiently as possible, however Bill 16-21 has too many uncertainties both legislatively and administratively – to force building owners to go forward with the long-term and costly investments and financing that will be necessary to install new equipment and related energy efficiency measures to comply with BEPS. See below our comments:

- Given the timeline included for requiring newly covered buildings under the benchmarking requirement it is unclear whether owners/operators not actively tracking 2021 data currently will be able to meet a reporting requirement for 2021. The proposal seems to be retroactively assuming all required data is available to buildings not currently benchmarking their usage so that despite being in Q2 already these newly covered buildings will be required to provide data for all of calendar year 2021 by June 2022. Will this be possible? Are all of the newly covered buildings able to monitor usage in the required manner without implementing new tracking tools/equipment that they don't currently have installed?
- With regards to coverage of mixed use properties does the proposal (or subsequent regulations) need to address management issues unique to these structures? For example, does the same entity operate and oversee both the residential and commercial spaces in the structure? Will reporting and performance standards be done collectively or separately for the multiple uses? Are performance standards on a single building able to be operationalized across the different types of tenants (residential/commercial)?

- One issue that we are not clear on (and may be an issue for the regulatory side of things) is how the proposal addresses issues of performance where the responsible party (the owner) is not the one responsible for usage (the tenant). While benchmarking may be easier to achieve how will the performance standard address existing structures where owner/operator doesn't control usage or pay for utilities? Tenants may have systems designed for optimum performance but if they are not used in an equally optimum manner (i.e. window open while running air conditioner) than how will the performance standard address this?
- Representation on the new Building Performance Improvements Board – while there is a slot for multifamily owner/operator and residential construction financing there is no representation for builder/developer. These seems short sided as the best place to influence performance I would think is during the construction/development stage. While they may see the owner/operator as decision maker the other members of the board make me think that they are trying to round out all aspects of the process and therefore there should be room for a builder perspective as well.
- The performance standard provisions looks at using a two-year average in setting a buildings baseline. Given the unique usage patterns associated with 2020/2021 due to the impact of the pandemic should there be some acknowledgement of how that may impact establishment of the baseline.

We appreciate the opportunity to offer our feedback on Bill 16-21 and look forward to working with the County Council and DEP on creating building performance standards that work for Montgomery County. If you have any questions or concerns, please contact Griffin Benton, Vice President of Government Affairs at [gbenton@marylandbuilders.org](mailto:gbenton@marylandbuilders.org) or (202)-815-4239.

Respectfully,

Griffin Benton  
VP, Maryland Building Industry Association

cc: Montgomery County Council

