



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Crumbles, Secretary
Horacio Tablada, Deputy Secretary

March 4, 2020

The Honorable Kumar P. Barve, Chair
Environment and Transportation Committee
House Office Building, Room 251
Annapolis, Maryland 21401

Re: House Bill 1490- Environment - Building Energy Performance Standards and Greenhouse Gas Emissions Reduction Targets (Clean Buildings Jobs Act of 2020)

Dear Chairman Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed *House Bill 1490- Environment - Building Energy Performance Standards and Greenhouse Gas Emissions Reduction Targets (Clean Buildings Jobs Act of 2020)* and would like to provide some information on this bill. The Department supports the bill's overall objective to reduce greenhouse gas (GHG) emissions; however, this bill would have a substantial fiscal and operational impact on the Department.

House Bill 1490 is applicable to buildings that have a gross floor area of at least 25,000 sq/ft, excluding any parking garage area (i.e. covered building). Buildings owned or controlled by federal, state, or local government and buildings designated as historic property under federal, state, or local law, would be exempt. Based on the Department's initial research, it appears that up to 500,000 buildings would be covered under this bill.

Under this bill, MDE must adopt regulations in consultation with MEA by January 1, 2021 to establish GHG monitoring and reporting requirements. The regulations must require the owner of a covered building to monitor its GHG emissions during each calendar year and report them to MDE. The regulations must require an owner of a building of at least 50,000 sq/ft to begin monitoring by January 1, 2021, and to report its 2021 emissions by July 1, 2022; while the owner of a covered building of less than 50,000 sq/ft must begin monitoring by January 1, 2022, and report its 2022 emissions by July 1, 2023. Because the bill will take effect on July 1, 2020, MDE would have approximately six months to propose, take public comment, and finalize the regulations.

The timeline of six months to develop these regulations is problematic. As a practical matter, regulations that go through the normal regulatory adoption process under Title II of the Environment Article take a minimum of six months to become effective. That does not include the initial research and consultation with other parties that go into writing the regulations. The Department would have to outsource the research and promulgation of regulations. However, even with contractual assistance, conducting the proper research and promulgating the regulations within six months is not achievable.

MDE would also be required to promulgate a second set of regulations in consultation with MEA by October 1, 2024, following receipt and evaluation of the submitted GHG emissions reports. These regulations would require MDE to establish various baselines for different categories of buildings, "including commercial, industrial, and residential," establish various GHG reduction goals, and establish building energy performance standards ("Standards") for different sizes and categories of buildings, as needed to achieve the 5-year reduction targets.

MDE would be responsible for enforcement of the Standards. MDE may waive compliance with a Standard on a

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case-by-case basis if certain criteria are met. A Standard may not normally be waived for more than 3 years. However, MDE may approve a waiver which extends for more than 3 years if an affordability test is met involving a rental building with five or more units. A person who fails to comply with the Standards must pay an "alternative compliance fee" to MDE to be set at a level where the cost of noncompliance exceeds the cost of compliance with the avoided Standard. A person who violates any other requirement of Subtitle 16 (e.g. annual monitoring of GHG emissions; submission of emissions reports) shall pay a civil penalty "not exceeding \$500 per violation."

These provisions would necessitate the creation of a new division within the Department due to the estimated large amount of buildings and the number and degree of responsibilities imposed on the Department. MDE would need to hire a Division Chief, an administrative support position, at least two Natural Resource Planners, one Regulatory and Compliance Engineer and a minimum of 20 additional Environmental Compliance Specialists in addition to possible contractual services to meet these provisions. The Department estimates that taking any enforcement action under this bill would also require hiring two Assistant Attorney Generals and one paralegal in addition to the staff listed above.

The bill also includes uncodified language which will establish the "Building Energy Performance Task Force." The Task Force is comprised of various members, including the Secretary of the Environment or his designee. The Task Force is to study, make recommendations, and advise MDE on the requirements in this bill. The Task Force is to report its preliminary findings and recommendations to the Governor and General Assembly by October 1, 2021, and make a final report of its findings and recommendations by October 1, 2023. The Task Force takes effect July 1, 2020 and shall be automatically abrogated and cease to exist on July 1, 2024. Given the fact that the Task Force takes effect July 1, 2020, the Department would seek to hire a contractual employee to staff the Task Force, but even hiring a contractual employee within that timeframe may not be feasible.

Thank you for your consideration. We will continue to monitor House Bill 1490 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", with a long horizontal line extending to the left.

Tyler Abbott

cc: The Honorable Vaughn Stewart
George "Tad" Aburn, Director, Air and Radiation Administration