Bill No: **SB 265 — Clean and Renewable Energy Standard (CARES)**

Date: **2/11/2020**

Position: **Oppose**

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's counties.

Senate Bill 265 replaces the Renewable Portfolio Standards (RPS) with a new Clean and Renewable Energy Standard (CARES). The new standards that are proposed would have two important impacts on buildings operated by AOBA members. First, the bill significantly increases the number of RECs that must be purchased to be in compliance. Second, the bill seeks to remove certain long existing eligible sources of Renewable Energy Credits (RECs) that are currently used for Tier 1 RPS compliance in Maryland.

As drafted, AOBA cannot support this bill. The current RPS was adopted in last year's Clean Energy Jobs Act to set a path towards a goal of 100% renewable energy supply by 2040. AOBA members acted accordingly to ensure compliance with the existing standards. AOBA supports this goal based on the timeline that was established last year. Our members will be unjustly burdened if such a steep increase is implemented this year.

Grandfathering Provision Is Necessary

SB 265 does <u>not</u> contain a "grandfathering" clause which would protect existing competitive energy supply contracts that AOBA members have entered with third party competitive suppliers with the understanding that their properties would be in compliance with the existing RPS standard. As a result, AOBA members would be forced to either renegotiate or prematurely terminate their existing, multi-year, competitive energy supply contracts or bear an unexpected increase in charges to a fixed price contract under a typical "change in law or regulation" provision contained in the majority of energy supply contracts. Thus, these new RPS standards will cause substantial unbudgeted increases in energy supply costs for early termination of existing contracts, as well as procurement of additional RECs in a market that will be provided little time to adjust to these requirements. This will drive market prices for RECs noticeably upward. These additional RPS requirements were not known when AOBA members' existing contracts were entered, and absent a grandfathering clause, our members contractual rights will be impaired.

Further, the costs of existing competitive energy supply contracts would be magnified by: (1) requirements that would increase the number of RECs an electricity user must purchase to be in compliance with the new CARE Standard; (2) the strain the new requirements will place on the existing supply and demand balance for renewable energy sources. Should this legislation move forward, AOBA urges the inclusion of a grandfathering provision to permit any contract entered into before the legislation is passed to be exempted from this increase through the contractually established term of each contract. Previous renewable energy legislation has provided for such grandfathering. The grandfathering provisions included in the past legislation have stated, "***That a presently existing obligation or contract right may not be impaired in any way by this Act***." AOBA submits that comparable grandfathering provisions are necessary and appropriate for SB 265.

Increased RECs

SB 265 proposes that in 2021 the Renewable Energy Standard will be increased by 25%. The Renewable Energy percentage in 2021 increases from 30.8% to 55.8% and will increase annually until the standard reaches 100% in 2040. The increase in SB 265 impacts the former Tier 1 renewable sources, now called Clean Energy Resources and Renewable Energy Sources, illustrated in the chart below.

	Existing RPS	Less Solar Carve Out	Less OREC Carve Out	Tier 1 RPS		SB 265	Less Solar Carve Out	Less OREC Carve Out	Tier 1 RPS
2021	30.8%	-7.5%	-2.50%	20.80%		**55.8%**	**-7.5%**	**-2.50%**	**45.80%**
2022	33.1%	-8.5%	-2.50%	22.10%		**58.1%**	**-8.5%**	**-2.50%**	**48.10%**
2023	35.4%	-9.5%	-2.50%	23.40%		**60.4%**	**-9.5%**	**-2.50%**	**50.40%**

Eliminating Tier 1 Sources

The RPS was established in Maryland as a mandate to increase the amount of clean energy used to serve customers in the State. As part of the current RPS, each supplier (including Standard Offer Suppliers) must be in compliance with RPS on an annual basis. Suppliers must file annual reports with the Maryland Public Service Commission that detail the total number of megawatt hours (mWh) that they supplied to their customers and, based on the RPS standard for that year, the number of RECs that were purchased to serve their energy requirements. The RPS includes three types of renewables: Solar, Off-Shore Renewable Wind (ORECs) and Tier 1 renewable sources (wind, landfill to energy, geothermal, small hydroelectric, black liquor, municipal solid waste and wood and waste solids).

SB 265 proposes to eliminate certain resources that were included in Tier 1 in the Clean Energy Jobs Act. Previously, waste-to energy, refuse-derived and black liquor fuels were eligible Tier 1 resources from which competitive suppliers could purchase RECs for compliance with RPS. In 2018, these Tier 1 resources represented roughly one third of the RECs that were retired by suppliers for compliance with

RPS.[1] The elimination of these resources could create a supply imbalance and artificially drive up the price for qualifying RECs . Furthermore, SB 265 does not address the potential penalties that would be imposed if there are not enough RECs to meet demand. If the market cannot meet the new mandated requirements, suppliers would be forced to pay the Alternative Compliance Penalty (ACP) of $30 per REC and energy costs to Maryland consumers would rise even further.

The example below shows the impact on an office building in Pepco MD service territory. This assumes that the additional RECs needed would be priced at the Alternate Compliance Payment price (ACP) of $30 per REC. The proposed legislation doubles the compliance cost annually for our members.

Exisiting RPS									
	Annual Usage in mWh	**Existing RPS**	**Less Solar Carve Out**	**Less OREC Carve Out**	**Tier 1 RPS**	**RECs Needed**	**ACP Price per REC**	**RPS Tier 1 Cost**	
2021	1,598	30.8%	-7.5%	-2.50%	20.80%	332	$ 30.00	$ 9,975	
2022	1,598	33.1%	-8.5%	-2.50%	22.10%	353	$ 30.00	$ 10,598	
2023	1,598	35.4%	-9.5%	-2.50%	23.40%	374	$ 30.00	$ 11,221	
	4,795							**$ 31,794**	
SB 265									
	Annual Usage in mWh	**SB 265**	**Less Solar Carve Out**	**Less OREC Carve Out**	**Tier 1 RPS**	**RECs Needed**	**ACP Price per REC**	**RPS Tier 1 Cost**	
2021	1,598	55.8%	-7.5%	-2.50%	45.80%	732	$ 30.00	$ 21,963	
2022	1,598	58.1%	-8.5%	-2.50%	47.10%	753	$ 30.00	$ 22,587	
2023	1,598	60.4%	-9.5%	-2.50%	48.40%	774	$ 30.00	$ 23,210	
	4,795							**$ 67,760**	
								$ 35,966	Increase cost

For the reasons stated above, AOBA urges an unfavorable report on SB 265.

For more information, please contact Frann Francis, Senior Vice President and General Counsel, at ffrancis@aoba-metro.org.

[1] Maryland Public Service Commission Renewable Energy Standard Report with Date for Calendar Year 2018