MARYLAND MULTI-HOUSING ASSOCIATION, INC.

Bill Title: **Senate Bill 256, Environment - Building Energy Performance Standards - Compliance and Reporting**

Committee: **Education, Energy and Environment**

Date: **February 13, 2025**

Position: **Favorable with Amendments**

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Senate Bill 256 gives the Maryland Department of the Environment (MDE) the authority to regulate site energy use intensity (EUI) and impose Alternative Compliance Fees (ACF). Site EUI is a measure of all the energy used to meet building energy loads. It is calculated using the benchmarking tool to divide the building energy use by the building's gross floor area and is expressed as a thousand British thermal units (kBTU) per square foot per year. ACFs are charged to building owners that have not met the targets set in the state BEPS regulations. The bill also assesses an administrative fee on building owners for filing benchmarking reports with MDE. Lastly, Senate Bill 256 directs ACFs to the state Strategic Energy Investment Fund

MMHA members recognize the importance of reducing greenhouse gas emissions in the fight against climate change and have already made significant investments in sustainability initiatives. However, MMHA is concerned about the impact that BEPS will have on housing affordability in Maryland. Case studies conducted for MMHA by Steven Winters Associates estimate that compliance with state BEPS could cost $20,000 to $40,000 per unit—not including substantial upfront expenses needed to increase a building's electrical capacity, the cost of financing energy efficiency measures, or the financial burden placed on tenants who may be displaced during renovations.

Additionally, many required measures have marginal costs that far exceed standard business expenses and are not offset by energy savings over their useful life. For example, replacing a gas-fired system with a heat pump can be more than four times as expensive due to necessary modifications to building infrastructure (e.g., ductwork, utility connections) and the added complexity of heat pump components (e.g., compressors, reversing valves, condensers).

As introduced, Senate Bill 256 would only compound these costs. To ease the administrative burden of BEPS compliance and mitigate its impact on housing affordability, MMHA urges the Committee to consider the following amendments:

- <u>Exempt counties with BEPS from the state regulations</u>: Montgomery County is currently the only county with its own BEPS regulations. It is our understanding, however, that several other counties are considering their own. MMHA supports the ability to regulate BEPS at the county rather than state level because counties have a better understanding of local building conditions and building owner needs. County BEPS also reduces the administrative burden and cost of implementation on MDE. Building owners should not, however, be required to comply with both county and state BEPS.

  There are several ways to craft this exemption that would still align with the state's climate goals. MMHA's preferred option is to exempt counties with regulations that are either as stringent as the state's or that apply to more buildings. Montgomery County BEPS, for example, applies to buildings over 25,000 square feet, which is 1,900 more buildings than the state. Alternatively, the exemption could be for site EUI only and it would apply to building types where the county and state EUI targets are aligned. Once again, Montgomery County's EUI targets mostly align with the initial EUI targets proposed by MDE.

- <u>Remove or substantially modify the authority to impose ACFs for site EUI</u>: The state regulations already impose fees for failing to achieve the state's building emissions targets. Regulating site EUI reduces building energy consumption, which offsets grid emissions. A 5 cent ACF for site EUI would result in high rent and condo fee increases as seen below.

  MMHA urges the Committee to remove MDE's authority to impose ACFs for site EUI. Should the Committee wish to retain this fee, it should be tied to grid and regional-specific emissions factors. This would directly tie site EUI to actual grid emissions, so that the impact of the fee is reduced as the grid becomes cleaner.

- <u>Adjust and/or waive penalties and fees for multifamily</u>: Given the housing affordability crisis, MDE should be required to waive penalties and fees for multifamily buildings through 2035. This waiver should apply to all multifamily buildings, not just condominiums and co-operative housing. Applying it to condos and co-ops would only ease the compliance burden on wealthier residents, while less affluent renters bare the full costs. In addition, any penalties and fees imposed from 2035 – 2039 should be tied to the 2030 interim targets. The Climate Solutions Now Act did not expressly require a second interim target. MDE elected to establish a second interim target in 2035 to give building owners additional guidance on the progress they should be making towards the final 2040 target.

- <u>Require MDE to establish Alternative Compliance Pathways (ACP)</u>: ACPs provide building owners with additional flexibility to comply with the regulations while accounting for economic infeasibility, technological limitations, and lifecycle asset replacement schedules. For example, it does not make sense to replace a furnace with 10 or more years of useful life. Both Montgomery County and Washington, DC have ACPs the provide building owners with the flexibility to implement cost effective energy efficiency measures on realistic timelines.

- Cap site EUI and GHG reduction requirements: It may not be economically or technologically feasible for some buildings to meet the BEPS targets. This places considerable pressure on naturally occurring affordable housing to redevelop. Montgomery County has capped its site EUI targets at 30% from the buildings baseline. Even with this cap, the county still expects that two-thirds of building owners will be able to meet its EUI targets. The result is that the county will achieve between a 92 – 96% emission reduction from its BEPS.

- Require MDE to expand their definition of economic infeasibility and financial distress conditions. Both Montgomery County and DC have more advantageous definitions of financial distress conditions that account for the cost of compliance for multifamily building types. The definition of economic infeasibility, for example, should be the same across all building types. The practical impact of this amendment is that building owners would only have to implement measures that have a simple payback of 10 years or less. A 25-year simple payback period does not work because many of the measures do not have a useful life of 25 years or more.

- Prohibit counties from imposing rent caps on BEPS measures: Both Montgomery and Prince George's Counties have instituted strict rent control caps that prevent multifamily building owners from fully recovering the cost of energy efficiency measures required to comply with BEPS. While both counties allow for capital improvement petitions, their definition of capital improvements is limited to structural changes. Not all energy efficiency measures are structural in nature. Without full cost recovery, many of these BEPS measures become even more economically infeasible.

- Require MDE to include onsite renewable when calculating site EUI: This amendment would encourage onsite renewables, which strengthens grid resiliency and reduces grid emissions. The onsite renewable energy credit should count whether the electricity generated is used onsite or exported back to the grid.

- Direct the annual reporting fee towards implementing ACPs: This fee appears to be tied to benchmarking submissions. MMHA could not find any other jurisdiction in the region that charges an annual reporting fee. Benchmarking is done through ENERGY STAR Portfolio Manager and can be exported by MDE automatically. Nevertheless, MMHA recognizes the need for MDE to generate additional revenue to administer BEPS. To that end, this fee should be directed towards implementing ACPs and to fund resident displacement.

- Require MDE to complete case studies on specific building types. Given the housing affordability crisis, MDE should be required to complete additional case studies on multifamily building types to better understand costs and challenges. Multifamily building types include 1 low-rise, 1 mid-rise, 1 high-rise, and 1 affordable housing property.

For these reasons, we respectfully request a favorable report with amendments on Senate Bill 256.