**TO:** Senate Education, Energy and Environment Committee

**FROM:** LeadingAge Maryland and LifeSpan Network

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

**DATE:** February 13, 2025

**POSITION:** Unfavorable

LeadingAge Maryland opposes Senate Bill 256, Environment - Building Energy Performance Standards - Compliance and Reporting.

Together LeadingAge Maryland and LifeSpan Network represent more than 140 not-for-profit aging services organizations as well as for-profit communities serving residents and clients through continuing care retirement communities, affordable senior housing, assisted living, nursing homes and home and community-based services. Our missions are to be the trusted voice for aging in Maryland, and our vision is that Maryland is a state where older adults have access to the services they need, when they need them, in the place they call home. Many of our members belong to both associations.

Senate Bill 256 expands the alternative compliance fee structure to include greenhouse gas emissions resulting from failing to meet direct reduction targets and *energy use attributable to failing to meet energy use intensity (EUI) targets*. The bill also introduces an annual reporting fee to cover the administrative costs of implementing building energy performance standards and directs alternative compliance fees to the Maryland Strategic Energy Investment Fund.

We applaud the state's efforts to address CO2 emissions and ensure that Maryland is taking steps to support climate health. However, implementation of energy use intensity targets will most certainly impact aging services providers, particularly not for profits, and exacerbate the financial and operational viability of a wide range of critically necessary organizations, especially affordable senior housing. Our members provide affordable housing, supportive services, and medical and personal care services to individuals with chronic illnesses, disabilities, or aging-related conditions, and face a range of financial and operational challenges. These challenges have been growing due to factors such as increasing demand for services, rising costs, and a complex regulatory environment. Notably, our members who provide affordable senior housing play a critical role in providing safe, and supportive housing for older adults on fixed or limited incomes. The new requirements and costs necessitated by the Building Energy Performance Standards would be untenable for many of these communities.

We oppose this legislation. However, if the Committee moves Senate Bill 256, we would offer the following amendments to help ameliorate the impact on the industry:

- <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. We support 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. Our 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.

  We urge 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 Long-Term Care Facilities</u>: Given the constraints on the industry, MDE should be required to waive penalties and fees for providers through 2035. This waiver should apply to all facilities, not just condominiums and co-operative housing. 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 Washington DC have better 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.

- 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. We 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, we recognize 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 displacement of our residents.

- Remove the annual reporting fee. This fee appears to be tied to benchmarking submissions. We could only find one other jurisdiction with such a fee. None in the region (DC, Montgomery, NYC, Boston).  The Maryland Department of Environment (MDE) will collect benchmarking data automatically in ENERGY STAR Portfolio Manager, so why do they need a fee? An annual reporting fee, on top of the costs to comply with the law, is burdensome. Communities are already being burdened with the cost of benchmarking, developing compliance program, and very expensive capital cost of compliance.

- 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 senior affordable housing property.

- Require technical assistance is available for both benchmarking and compliance pathway development for non-profit senior living communities. There is really no way for most organizations to determine if certain measures will help them meet the requirements without hiring energy modelers and consultants, which most organizations cannot afford.

For these reasons, LeadingAge Maryland and LifeSpan Network respectfully request an unfavorable report for Senate Bill 256.

For more information, please contact Aaron Greenfield at 410.446.1992 or aaron@agreenfieldlaw.com or Danna Kauffman at 410.294.7759 or dkauffman@smwpa.com.