

National Housing Trust
Testimony to the Senate Education, Health, and Environmental Affairs Committee
SB 528- the Climate Solutions Now Act of 2022
Position: FAVORABLE WITH AMENDMENTS
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Submitted by:
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National Housing Trust (NHT) is a non-profit that creates and preserves affordable homes to provide opportunity, advance racial equity, reduce economic disparities, and strengthen community resilience through practice and policy. As an affordable housing developer, NHT has preserved 450 affordable housing units in Maryland, including most recently Hamilton Manor in Hyattsville. As a policy advocate for sustainable affordable housing, NHT has been deeply engaged in the Building Energy Performance Standard (BEPS) policymaking process in Washington, D.C., including as a representative of affordable housing owners on the D.C. Building Energy Performance Standards Task Force.

This testimony is focused on the Building Emissions Standard in SB 528. NHT supports the Building Emissions Standard with amendments that would provide flexibility to ensure that affordable housing can comply with the performance standards.

The following organizations support the recommendations proposed in this testimony:

- **AIA Maryland**
- **American Council for an Energy-Efficient Economy**
- **Green and Healthy Homes Initiative**
- **Maryland Affordable Housing Coalition**
- **MLC Climate Justice Wing**
- **Natural Resources Defense Council**
- **Sierra Club**
- **Takoma Park Mobilization Environment Committee**

A building performance standard (BPS) is an important policy tool for accelerating decarbonization and delivering health and economic benefits to residents. Like any policy, BPS should be designed in a way that centers community priorities, provides direct benefits to under-resourced communities, and does not exacerbate existing inequities.¹

BPS policies should not exempt affordable housing. Electrifying and improving the energy and water efficiency of multifamily buildings can preserve affordable housing by

¹ Building Performance Standards: A Framework for Equitable Policies to Address Existing Buildings, Prepared for the American Cities Challenge, July 2021.

lowering operating costs, reducing residents' energy bills, and creating healthier housing. However, affordable housing owners face several obstacles to improving the energy efficiency of their properties. Obstacles primarily relate to limited access to the funding and staff capacity required to undertake building upgrades. Therefore, it is essential that easily accessible funding and technical assistance be available to help affordable housing owners comply with the law. Complementary policies and programs and compliance flexibility are necessary to ensure that the costs of BPS are not passed through to tenants or force owners of under-resourced buildings to sell their buildings if they cannot comply with the law.

The Amendments presented below:

- provide flexibility to affordable housing owners by allowing for alternative compliance pathways,
- ensure that the Building Energy Transition Implementation Task Force includes a tenant representative and directs the Task Force to prioritize identifying policies and programs that provide tenant protections and funding for affordable housing, and
- create a role for the Task Force in advising the Department on the development of BPS regulations to ensure that input from community members is considered.

Proposed Amendments to SENATE BILL 528 Climate Solutions Now Act of 2022

Amendment #1:

- Pg, 47 under "Regulations adopted under this section shall:" add "Allow owners of covered buildings to submit an Alternative Compliance Action Plan to the Department if the building owner cannot meet the interim or final emissions standards by the required date or cannot meet the interim or final emissions standards due to economic infeasibility or other circumstances beyond the owner's control. The Plan shall include: (a) documentation of economic infeasibility or other circumstances beyond the owner's control such that the interim or final emissions standards cannot be met; (b) if applicable, new proposed interim or final emissions standard; (c) a list of actions the owner will take to achieve the proposed interim or final emissions standard; (d) the timeline for achieving the proposed interim or final emissions standard; and (e) other requirements determined by the Department.

The criteria for evaluating an Alternative Compliance Action Plan submitted by owners of affordable housing shall include, at a minimum, whether: (a) there is a plan to refinance or recapitalize their property; or (b) there are cash flow constraints, including, but not limited to, restrictions on the usage of net cash flow, or prohibition from utilizing a portion of existing cash reserves for implementing improvements to the building that would reduce emissions."

Purpose of Amendment:

- Provides flexibility for building owners who face significant challenges to meeting compliance by proposing revised emissions standards and/or an adjusted timeline for meeting the emissions standard.
- Assures accountability by:
 - Requiring owners to document the reasons they cannot meet the emissions standard and/or timelines
 - Specifying the requirements that owners must meet when applying for an alternative compliance pathway and authorizing the administering agency to approve or deny the owner's proposed Plan.
- Specifies financial barriers unique to affordable housing that the Department must consider when evaluating a proposed alternative compliance action plan.

Why It's Important:

- A covered building may have specific circumstances such as financial distress, changing ownership, changing occupancy type, vacancy, demolition, or other events that may require adjustments to compliance requirements and timeline.
- Affordable housing faces unique financial challenges, such as an inability to take on new debt between recapitalizations, limited cash flow due to restricted rents, and restrictions on using reserves for building improvements in regulated housing.
- Alternative compliance may be used as a tool to chart custom compliance paths for buildings to match with their capital investment cycle and provide additional flexibility as needed while still requiring building owners to take action to reduce emissions.
- Building performance policies in Boston, Denver, DC, and St. Louis provide a process for building owners to request adjustments to the compliance timeline and/or performance target.

Amendment #2:

- Pg. 50, add to the Building Energy Transition Implementation Task Force: "One representative who is a tenant of an apartment building or is an advocate for the rights of tenants of apartment buildings."

Purpose of Amendment:

- Adds a tenant or tenant advocate to the Task Force

Why It's Important:

- Including a tenant representative can provide perspective on real-world constraints on achieving the policy's goal and can help target funding, supportive programs, and resources to those who need it most.

Amendment #3:

- Pg, 51, under "The Task Force Shall" add "Study the costs of complying with building emissions standards for different building types including, but not limited to, affordable housing."

Purpose of Amendment:

- Requires the Task Force to conduct a cost analysis for different building types and sizes.

Why It's Important:

- The Task Force members and other stakeholders will need cost information to weigh complementary policy and program design considerations and shape supportive programs.

Amendment #4:

- Pg. 51, under the "Task Force Shall" add "Study and make recommendations regarding the development of complementary programs and policies that protect renters from increased rents and energy burdens and risk of displacement."

Purpose of Amendment:

- Helps ensure that programs and policies will be in place to protect tenants from unintended consequences that perpetuate existing inequities.

Why It's Important:

- If upgrade costs or penalties/fines are passed through to renters, this could result in eviction and long-term displacement, especially in unregulated affordable housing where there is no restriction on how much the landlord can charge for rent.
- The potential cost of compliance could also lead building owners to sell their properties to new owners who may raze or upgrade the building, making it no longer affordable.

Amendment #5:

- Pg. 51, line 12, under the "Task Force Shall" add at the end of the sentence "that shall prioritize recommendations for funding the retrofit of affordable housing."

Purpose of Amendment:

- The bill requires the Task Force to develop a plan for funding retrofits of covered buildings. The amendment prioritizes developing funding recommendations for affordable housing.

Why It's Important:

- Funding and technical assistance for affordable housing are critical parts of an equitable building performance standard law.
- Affordable housing owners will struggle to meet performance standards without such assistance.
- Compliance costs could force building owners to sell or redevelop their buildings, resulting in the loss of affordable housing and displacement of renters.

Amendment #6:

- Pg. 51, under the "Task Force Shall" add: "Advise the Department on the creation of an implementation plan for the Emissions Standards Program; and Recommend amendments to proposed regulations issued by the Department."

Purpose of Amendment:

- Adds to the Task Force's responsibilities advising the Department on creating the rules to implement the policy.

Why It's Important:

- Ensures that key stakeholder perspectives are consulted as the regulations and implementation plan for the building emissions standard are developed.
- Helps the Department to understand the real-world constraints and impacts of the policy.

Amendment #7:

- Incorporate a definition of "Affordable Housing" by adding the following: "Affordable Multifamily Housing means buildings that are primarily residential, contain five or more dwelling units, and: (1) In which use restrictions or other covenants require that at least 50% of all of the building's dwelling units are occupied by households that have household incomes of less than or equal to

80% of the area median income; or (2) The building owner can demonstrate that at least 50% of the dwelling units rent at levels that are affordable to households with incomes less than or equal to 80% of the area median income."

Purpose of Amendment:

- Defines affordable housing for the purpose of qualifying for flexibility.

Why It's Important:

- Uses a definition that aligns with affordable housing programs make it easier for building owners that use those programs to prove affordability.
- Incorporates naturally occurring affordable housing and provides building owners two ways to qualify as affordable: based on tenant income or rent level -- referencing rent level makes it easier for owners of unsubsidized affordable housing to demonstrate affordability.
- Defines as affordable any building for which most of its units are affordable.

Thank you for considering these recommendations to improve SB528. If you have any questions about this testimony, please contact Todd Nedwick, Senior Director of Sustainability Policy, at tnedwick@nhtinc.org or 202-333-8931 ext. 128.