



January 17, 2022

The Honorable Kumar P. Barve, Chair  
House Environment and Transportation Committee  
House Office Building, Room 251  
6 Bladen St., Annapolis, MD 21401

**Oppose: HB 61 Charter Counties – Enforcement of Local Building Performance Laws**

Dear, Chair Barve and Committee Members:

The NAIOP Maryland Chapters represents more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate. While we see the need to comply with and enforce government regulations, we oppose House Bill 61, as introduced, which would authorize charter counties to impose fines of up to \$10 per square foot of floor area for failure to comply with local building energy performance laws.

House Bill 61 is a powerful, potentially punitive, enforcement tool that arrives as a stand-alone bill without any accompanying structure to ensure that the local building energy performance standards it will enforce are based on common organizing principles and align with state climate mitigation policies. Inconsistencies between local building performance policies that seek to reduce **on-site energy use** and the state's climate mitigation policies which seek to reduce **on-site carbon emissions** have important implications. Failing to reconcile the different approaches will accelerate an inequitable shift in mitigation responsibilities from utilities to the building sector, create bureaucratic confusion for regulated entities, compel investments in buildings that may reduce energy use but have questionable emissions reduction value, and expose building owners and occupants to non-compliance fees far higher than the social cost of carbon - even if their building has no on-site carbon emissions.

The state greenhouse gas inventory calculates building sector emissions based on the carbon emissions that result from the on-site combustion of fossil fuels to supply heat, hot water, and other needs. Emissions associated with the generation of electricity used in buildings are considered the direct emissions of power generating stations and are assigned to the utility sector. Strategies to reduce utility emissions are managed through the state's Renewable Portfolio Standard, the Regional Greenhouse Gas Initiative and other state / federal policies designed to reduce power plant emissions.

Local regulations that reduce *on-site energy use* rather than *on-site carbon emissions* have taken a different approach that results in an inequitable shift of mitigation responsibilities from the utility sector to the building sector. According to Montgomery County's greenhouse gas emissions inventory, 67% of emissions attributed to commercial buildings result from generation of grid electricity by utility power stations. Building owners and occupants do not control the carbon intensity of the energy used to generate electricity provided by their local utility. This methodology backed by House Bill 61 will compel building owners and occupants to incur capital and operating expenses that serve to reduce the direct emissions of electric power generating stations - including out of state generating facilities which supply 30% of Maryland's electricity.

The leverage provided by House Bill 61 would result in the inefficient allocation of capital to mandatory building upgrades that have questionable emission reduction benefits because they will result in avoiding use of electricity generated at zero carbon facilities. 30% of electricity is generated by the Calvert Cliffs nuclear power plant and the Renewable Portfolio Standard has mandated increases in the percentage of electricity from wind, solar and other renewable energy sources.

House Bill 61 would authorize heavy, non-compliance penalties of up to \$10 per square foot for failure to sufficiently reduce use of grid generated electricity. This means that buildings with no direct carbon emissions would be subject to civil penalties. In the current cohort of buildings covered by the first phase of Montgomery County's building energy performance standard there appear to be more than 240 regulated buildings that have on-site carbon emissions. For many buildings \$10 per square foot would be orders of magnitude higher than other benchmarks such as the social cost of carbon.

A smooth energy transition will require coordinated efforts at all levels of government to prevent energy price shocks, maintain energy reliability, limit consumer capital and operating costs and avoid reliance on unproven technologies. The majority of IPCC model compliance pathways, academic literature and numerous technical studies make clear the need to preserve the option to use a full range of future technologies as well as market-based approaches to meet mid-century net zero emissions commitments.

Success in climate mitigation fits the ambition and values of commercial real estate. For decades, NAIOP's member companies have been dedicated to energy efficiency, conservation, and high-performance construction. This experience leads NAIOP to consider deep reductions in carbon emissions from buildings to be the most challenging of the sectors. More than 3 million fossil fuel powered devices provide heat, hot water, cooking and other essential services in Maryland buildings. Reducing carbon emissions in the building sector will require coordinated and concurrent efforts in six interrelated areas: 1) decarbonization of energy sources; 2) transformation of utility distribution infrastructure; 3) commercialization of new technologies; 4) adoption and coordinated integration of supportive policy reforms; 5) changes to end use operations and equipment and; 6) restructuring and scaling of financial incentives.

We are happy to work with the sponsors and committee on House Bill 61 and the adjacent policy concerns but cannot support the bill as introduced.

Sincerely,



Tom Ballentine, Vice President for Policy  
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: House Environment and Transportation Committee Members  
Nick Manis – Manis, Canning Assoc.