



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

January 19, 2022

TO: The Honorable Kumar P. Barve
Chair, Environment and Transportation Committee

FROM: Marc Elrich
County Executive

RE: House Bill 61 – *Charter Counties - Enforcement of Local Building Performance Laws (Building Energy Performance Standards Act of 2022)* – Support

I am writing to express my strong support for House Bill 61 – *Charter Counties - Enforcement of Local Building Performance Laws (Building Energy Performance Standards Act of 2022)*, which grants authority to charter counties to enhance enforcement efforts for building energy performance (BEPS).

We are in a climate emergency. The concentration of greenhouse gases (GHGs) in the earth's atmosphere is directly linked to rising global temperatures and increased catastrophic storm events. The most abundant GHG (about two-thirds of all GHGs) is carbon dioxide, which is directly linked to burning fossil fuels. Responding to this emergency, Montgomery County established a goal of reducing GHG emissions throughout the County's public and private sectors by 80% by 2028 and 100% by 2035. A major contributor to GHG emissions in the County is the commercial building sector, which accounts for 26 % of the County's community-wide emissions.

The County has already adopted BEPS for new construction and is currently in the process of designing BEPS for existing buildings. A bill to enact this type of program is currently under review by the County Council. The BEPS legislation before Council was designed with input from stakeholders, groups from commercial and multifamily building communities, and those that serve them, including advocacy groups, utilities, and energy contractors to ensure BEPS is informed by them. It considered their interest in long-term performance, utilizing energy use intensity (energy use per square foot) as a metric, reporting continuing with Energy Star Portfolio Manager, and needs for both technical and financial assistance as well as directing compliance funds back to building owners. I believe that a BEPS program for existing buildings is a foundational policy action that will directly reduce emissions from the existing built environment.

The proposed BEPS requirements and accompanying financial and technical assistance, including the Green Bank financing options, Commercial PACE financing, the County's new energy-efficient building tax credits, utility incentives, and State grants and incentives, will help property owners succeed in reducing the climate impacts of their buildings through deep energy retrofits, operational improvements,

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and tenant engagement. As proposed, the program would eventually cover 85% of commercial and multifamily floor area in the County.

The BEPS program is expected to produce many benefits beyond direct GHG reductions, including: (1) reduced utility and operating costs for building owners and tenants; (2) improved, more resilient, and higher-value building stock in the County; (3) improved health from better indoor air quality; and (4) increased local economic activity and green jobs related to the building upgrade market.

Montgomery County currently has a variety of energy efficiency incentives and financing options available through the Montgomery County Green Bank that would assist the commercial industry in achieving compliance with BEPS and the County will continue to pursue further incentives. However, a major challenge to enforcement of BEPS in other jurisdictions and expected to be a challenge in the County, is ensuring compliance through penalties or alternative compliance payments. The purpose of these types of payments is to encourage commercial property owners to invest in their buildings and achieve the standards. The County is currently limited to an alternative compliance payment or a negligible civil penalty. By State law, that penalty cannot exceed \$1,000 per occurrence. Although the County may technically impose a separate fine for each day that a building is not in compliance with BEPS requirements, doing so would be burdensome (would require daily inspection and each fine would be considered a separate instance) if not impossible to enforce, and would still be too small to incentivize compliance for many commercial buildings (e.g., a daily fine for one year would total \$360,000).

Looking at the District of Columbia, which has a \$10 per square foot penalty for violation of its BEPS, a fine for a building of 200,000 square feet could be up to \$2,000,000. Similar to the District's penalty, this bill would allow the County – any county – to set a realistic penalty for noncompliance with BEPS. Our goal is to align the cost to comply with the standards with the potential penalty, such that compliance is preferred. We plan to continue to work with building owners throughout this process and hope that building owners will opt to comply, invest in their properties, receive the reduced utility and operating costs, and help us face the climate emergency, together.

I respectfully request that the Environment and Transportation Committee give this bill a favorable report.

cc: Members of the Environment and Transportation Committee