Bill:	**House Bill 49 – Environment – Building Energy Performance Standards – Compliance and Reporting**
Committee:	**Environment and Transportation**
Date:	**February 12, 2025**
Position:	**Favorable with amendments**

The Apartment and Office Building Association (AOBA) of Metropolitan Washington is a non-profit trade association representing the owners and managers of more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's counties. AOBA submits the following testimony in support of House Bill 49 with amendments.

There are two components to state BEPS: the net direct emissions (NDE) component, which requires building owners to get to zero emissions by 2040; and the site energy use intensity (EUI) component that requires building owners to reduce energy consumption. The site EUI component was delayed by the General Assembly until the first year of benchmarking is completed and additional analysis on the cost of site EUI is conducted. The Maryland Department of the Environment (MDE) is widely expected to reintroduce the site EUI component in 2027.

HB 49 codifies MDE's authority to regulate site 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, HB 49 directs ACFs to the state Strategi Energy Investment Fund.

AOBA members understand the importance of reducing greenhouse gas emissions to fight climate change. In fact, many members have made considerable investments in robust sustainability practices. However, AOBA is concerned about the impact that BEPS will have on housing affordability in the state. According to case studies completed for AOBA by Steven Winters Associates, state BEPS will cost upwards of $20,000 - $40,000 per unit. This does not include the heavy up costs, which are required

to increase electrical capacity to the building; the cost of financing the energy efficiency measures; or the loss of tenant income due to tenant displacement while the improvements are completed.

Furthermore, many of the measures have marginal costs that far exceed the "business as usual" costs. These costs are not offset by energy savings over the useful life of the measure. For example, it can be more than four times as expensive to replace a gas-fired system with a heat pump because heat pumps require changes to building infrastructure (e.g., ductwork, utility connections). Heat pumps also have additional components (e.g., compressor, reversing valves, condensers, etc.) that make them inherently more expensive to engineer and manufacture.

As introduced, HB 49 will only compound these costs. To ease the administrative burden of complying with state BEPS and reduce the impact on housing affordability, AOBA urges the Committee to make the following amendments to the bill:

1. **Exempt buildings in counties with BEPS from the state regulations;**

While Montgomery County is currently the only county with its own BEPS regulations, several others are reportedly considering their own standards. AOBA 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 in a way that aligns with the state's climate goals. The first option is to exempt county BEPS that apply to more buildings than the state regulations. Montgomery County BEPS, for example, applies to buildings 25,000 square feet or more, which is 1,900 more buildings than state BEPS threshold of 35,000 square feet. The second option is to require counties to demonstrate that their BEPS regulations result in comparable emission reductions to the state regulations.

County BEPS should not, however, be required to be "as stringent" as state BEPS. Stringency is subjective and influenced by building owner behavior. For example, while state BEPS allows building owners to pay Alternative Compliance Fees (ACFs) for not meeting the state targets, Montgomery County BEPS does not provide this option. This suggests that the county standards will achieve deeper levels of emissions reductions, regardless of whether the state standards are more stringent. If the Committee elects to set a stringency requirement, Montgomery County BEPS should be grandfathered in recognition of the time and resources that the county has invested in developing its standards.

2. **Remove or substantially modify the authority to impose ACFs for site EUI;**

State BEPS already imposes fees for failing to achieve the state's emissions reduction targets. Regulating site EUI is intended to reduce building energy consumption, which lowers energy demand and offsets grid emissions. Reducing energy consumption is a noble goal, given the state's rising energy costs. However, site EUI targets go far beyond that goal and will be costly for building owners to comply with.

ACFs will not provide much relief to multifamily building owners or their tenants. AOBA understands that MDE intends to impose the higher of the emissions (GHG) or EUI fees. AOBA used Montgomery County benchmarking data to calculate the impact of GHG and EUI fees on rents and condominium fees in the county. For the purposes of this analysis, AOBA used the $230 - $270 GHG fee established in the state BEPS regulations, and a proposed site EUI fee $0.05 cent per kBTU. To illustrate the impact of these fees, AOBA examined two scenarios: one where no changes occur due to logistical, technological, or economic infeasibility of energy efficiency measures; and another where buildings implement cost-effective measures over a 15-year period.

According to this analysis, rents and condo fees are projected to increase by 3% and 6%, respectively, by 2040 under the no-change scenario. These increases are in addition to the normal increases from inflation and rising operating expenses for both housing types.

Figure 1.

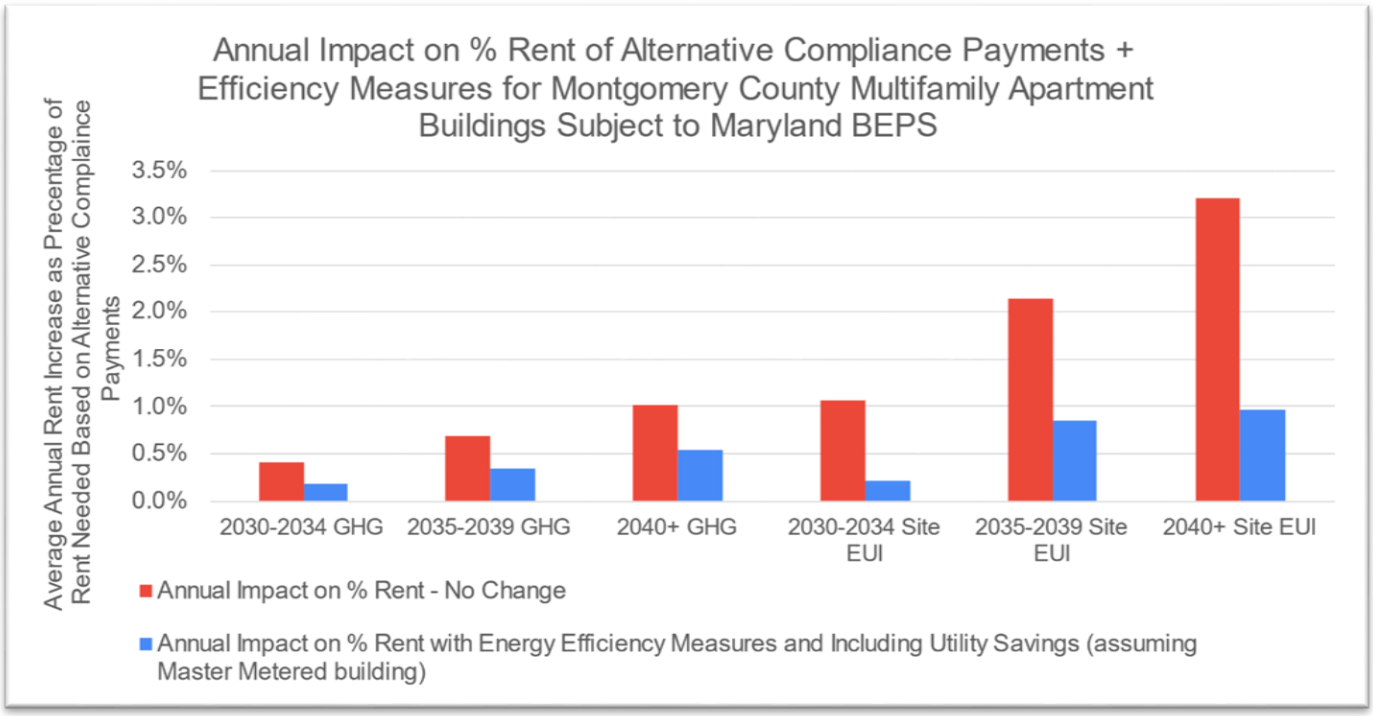
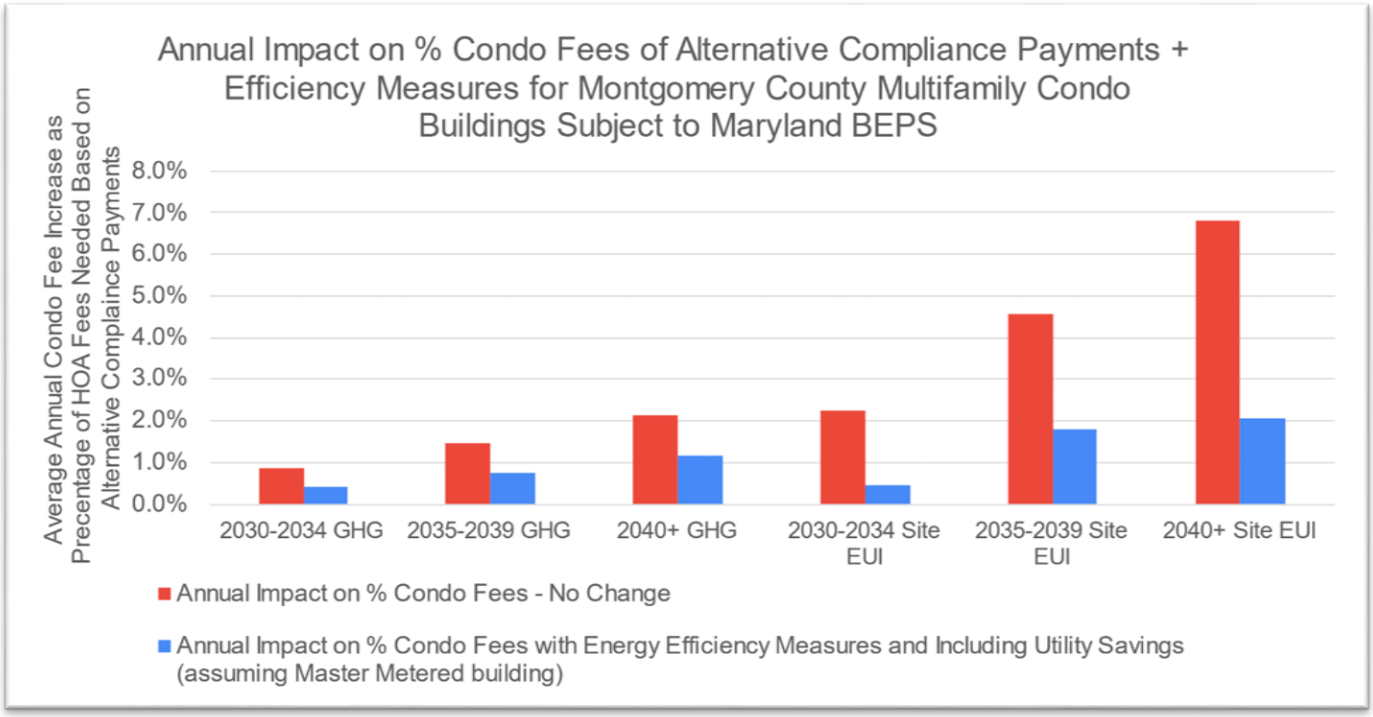


Figure 2



AOBA urges the Committee to remove MDE's authority to impose ACFs for site EUI. If the Committee elects 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 renewable energy increases and grid emissions decrease.

3. **Adjust and/or waive penalties and fees for multifamily;**

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.

4. **Require MDE to establish Alternative Compliance Pathways (ACP);**

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 would be impractical to replace a gas-fired piece of equipment 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. AOBA has heard that MDE is considering an ACP with a one-time fee waiver of up to 5 years for economic infeasibility. This one-time fee waiver may not be sufficient for buildings that have

physical space or other financial limitations to implement energy efficiency measures. AOBA urges the Committee to allow ACPs to continue in five-year increments until the limiting factors are resolved.

5. **Cap site EUI targets;**

It may not be economically or technologically feasible for some buildings to meet the BEPS targets. This also places considerable pressure on naturally occurring affordable housing to redevelop. Montgomery County has capped its site EUI targets at 30% from the building's baseline. Even with this cap, the county estimates 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 BEPS.

6. **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. Figure 3 below is a case study of BEPS measures required to comply with state BEPS that was prepared for AOBA by Steven Winters Associates. The only measure with a lifespan of 25 years is cooking fuel conversion.

Figure 3.

Table 6 EEM package for Maryland BEPS compliance

#	EEM Category	Name	Energy, Cost, Lifespan, and Simple Payback									
			Incremental Site EUI Savings (%)	Electric Savings (kWh/Yr)	Natural Gas Savings (therms/Yr)	Direct GHG Emissions Savings ($kgCO_2e$/SF)	Measure Cost /SF	BAU Cost/ SF	Marginal Cost/ SF	Simple Payback (Yrs)	Marginal Cost Simple Payback (Yrs)	Lifespan (Years)
1	Load Reduction	DHW Piping Insulation	<1%	-	600	0.02	$0.02	-	$0.02	4	4	15
2	Load Reduction	Water Treatment	4%	3,400	2,400	0.12	$0.12	-	$0.12	3	3	8
3	Load Reduction	Lighting Upgrade	<1%	8,400	-	0.00	$0.02	-	$0.02	2	2	10
4	Load Reduction	Low Flow Fixtures	<1%	23,200	400	0.02	$0.08	-	$0.08	<1	<1	3
5	Load Reduction	Building Controls Upgrades	6%	37,100	2,100	0.11	$0.78	-	$0.78	10	10	15
6	Load Reduction	Programmable Thermostats	1%	4,000	500	0.03	$0.27	-	$0.27	EUL	EUL	10
7	Electrification	DHW System Upgrade	9%	-43,800	7,200	0.36	$5.16	$0.68	$4.49	EUL	EUL	15
8	Load Reduction	CW to DHW Heat Exchanger	1%	-	800	0.04	$0.74	-	$0.74	EUL	EUL	5
9	Electrification	Cooking Fuel Conversion	2%	-30,400	2,600	0.13	$1.50	-	$1.50	EUL	EUL	30
10	Envelope Improvement	ENERGY STAR Doors and Windows	10%	28,800	6,200	0.31	$7.32	$6.08	$1.24	EUL	EUL	20
Totals for Interim 1 Site EUI and Direct Emission Target			**34%**	**30,700**	**22,800**	**1.14**	**$16.01**	**$6.76**	**$9.26**	**-**	**-**	**-**
11	Load Reduction	Appliance Retrofit	<1%	13,000	-	0.00	$0.95	$0.25	$0.70	EUL	EUL	10
13	Envelope Improvement	Air Barrier Continuity	1%	23,400	300	0.02	$2.68	-	$2.68	EUL	EUL	20
12	Electrification	HVAC System Upgrade	8%	-124,500	11,600	0.57	$17.66	$1.17	$16.49	EUL	EUL	15
Totals for Interim 2 Site EUI and Direct Emission Target			**44%**	**-80,800**	**34,400**	**1.71**	**$37.30**	**$8.18**	**$29.13**	**-**	**-**	**-**
14	Envelope Improvement	Roof Insulation	<1%	2,500	700	0.11	$4.10	$3.07	$1.03	EUL	EUL	20
15	Envelope Improvement	Exterior Wall Insulation	2%	3,900	2,200	0.03	$13.69	-	$13.69	EUL	EUL	20
TOTALS (Measures to Meet Maryland BEPS)			**47%**	**-51,000**	**37,600**	**1.84**	**$55.10**	**$11.25**	**$43.85**			

7. **Prohibit counties from imposing rent caps on ACFs and 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. As seen in the Figure 3, not all energy efficiency measures are structural in nature. Without full cost recovery, many of these BEPS measures become economically infeasible to finance. Furthermore, neither county rent control law accounts for ACFs. As noted in Figure 3, housing providers may have to raise rents if they cannot implement energy efficiency measures to meet the BEPS targets. Without the ability to raise rents to pay for ACFs, housing providers will have to defer other operating and capital needs.

8. **Require MDE to include on-site renewable when calculating site EUI;**

This amendment would encourage on-site renewables, which strengthens grid resiliency and reduces grid emissions. The on-site renewable energy credit should count whether the electricity generated is used on-site or exported back to the grid.

9. **Tie annual reporting fee revenue with ACP implementation; and**

This fee appears to be tied to benchmarking submissions. AOBA 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, AOBA recognizes the need for MDE to generate additional revenue to administer BEPS. To that end, this fee should be directed towards implementing ACPs.

10. **Require MDE to complete case studies on specific building types.**

Case studies may help inform MDE and the General Assembly's approach to BEPS implementation. These case studies can be restricted to a subset of the most common types of buildings for budget purposes but should include at least the following multifamily housing types: 1 low-rise (4 stories or less), 1 mid-rise (5-8 stories), and 1 high-rise (above 8 stories).

AOBA urges the Committee to vote favorable with the amendments outlined above on House Bill 49. For more information, please contact Brian Anleu at banleu@aoba-metro.org.