



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
County Executive

February 2, 2022

TO: The Honorable Paul G. Pinsky  
Chair, Education, Health, and Environmental Affairs Committee

FROM: Marc Elrich  
County Executive

RE: Senate Bill 81 – *Charter Counties - Enforcement of Local Building Performance Laws (Building Energy Performance Standards Act of 2022)* – Support

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I am writing to express my strong support for Senate Bill 81 – *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 laws.

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. Responding to this emergency, Montgomery County established a goal of reducing GHG emissions throughout the County by 80% by 2027 and eliminating GHG emissions 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.

A bill to establish Building Energy Performance Standards (BEPS) for certain public and private commercial and multifamily buildings in Montgomery County is currently under review by the County Council. I believe that a BEPS program for existing buildings is a foundational policy action that will directly reduce emissions from the existing built environment.

Other jurisdictions across the Country have successfully enacted BEPS in response to their climate commitments, including Washington, D.C., New York City, St. Louis, Denver, and Boston. We anticipate the number of jurisdictions with BEPS policies to grow significantly in the coming years, with assistance from the White House Council on Environmental Quality's National Building Performance Standards (BPS) Coalition launched on January 21, 2022. Montgomery County, Prince George's County, and the City of Annapolis have signed on as BPS Coalition participants along with many other jurisdictions nationwide.

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Montgomery County's proposed BEPS requirements, supported by financial and technical assistance, including financing options from the Montgomery County Green Bank, Commercial PACE financing, the County's new energy-efficient building tax credits, EmPOWER 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, and tenant engagement. As proposed, the program would eventually cover 85% of the commercial and multifamily floor area in the County.

The County's 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) 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.

One aspect of State law that will hamper any Maryland jurisdiction that seeks to enact building energy performance laws is the inability to encourage compliance through penalties or alternative compliance payments commensurate with the cost of complying with a performance policy. State law currently allows the imposition of a civil penalty of up to \$1,000 per occurrence for the violation of a performance standard. Although a county could technically impose a separate fine for each day that a building is not in compliance with BEPS requirements, this would be burdensome to implement and enforce.

Senate Bill 81 would enable charter counties that are developing their own energy performance laws to establish penalties consistent with their policy objectives and those recommended in the Maryland Commission on Climate Change Building Energy Transition Plan.

*Please note that this bill does not require or mandate that any jurisdiction establish a BEPS policy or corresponding penalties to enforce such a policy. It merely enables counties to set a realistic penalty for noncompliance, if they choose to establish and enforce BEPS policies.*

Our goal, as it is with any enforcement action, would be to establish a penalty for noncompliance such that compliance is preferred. I hope that building owners would opt to comply, invest in their properties, benefit from reduced utility and building operating costs, and help us face the climate emergency together.

I respectfully request that the Education, Health, and Environmental Affairs Committee give this bill a favorable report.

cc: Members of the Education, Health, and Environmental Affairs Committee