



February 2, 2022

The Honorable Paul Pinsky, Chair  
Senate Education, Health and Environmental Affairs Committee  
Miller Senate Office Building, 2 West  
Annapolis, MD 21401

**Oppose: SB 81 Charter Counties – Enforcement of Local Building Performance Laws**

Dear, Chair Pinsky 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 for the public to comply with and for governments to enforce regulations, we oppose Senate Bill 61, as introduced.

Senate Bill 81 is a powerful, unconstrained, potentially punitive, enforcement tool that arrives as a stand-alone bill without any accompanying structure to ensure equitable implementation or mechanisms to ensure the local building energy performance standards it will enforce are based on common organizing principles that align with the methodologies and support the strategic direction of state climate mitigation policies.

It would authorize charter counties to impose fines orders of magnitude larger than other benchmarks like the social cost of carbon. Because there is a weak relationship between square footage and the carbon emissions of a building, the bill could result in uneven and disproportionately high penalties between buildings. In jurisdictions that decide to measure a building's performance based *on site energy use*, buildings that have no direct carbon emissions, will be exposed to extraordinarily high non-compliance fees for failing to meet locally determined requirements.

In enacting and reauthorizing the Green House Gas Reduction Act, the General Assembly included specific requirements that the plans developed to address climate change meet certain performance criteria. In doing so the Assembly expressed an intent that climate adaptation and mitigation be implemented through a state level, unified approach. Allowing local governments to develop their own methodologies and mitigation practices will create bureaucratic confusion and could result in well-meaning efforts that are not the most cost-effective or expedient way to reduce greenhouse gas emissions.

For example, 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 result in local regulatory approaches that accelerate an inequitable shift in mitigation responsibilities from utilities to the building sector, 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.

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 Senate Bill 81 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.

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. Coordination of penalties and incentives is a key component of success.

Sincerely.

A handwritten signature in blue ink, appearing to read "T.M. Ballentine".

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

cc: Senate EHEA Committee Members  
Nick Manis – Manis, Canning Assoc.