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February 10, 2025

The Honorable Marc Korman
Chair, House Environment and Transportation Committee
250 Taylor House Office Building
Annapolis, Maryland 21401

RE: House Bill 49 Environment - Building Energy Performance Standards - Compliance and Reporting
OPPOSED

Dear Chairman Korman and Members of the Committee,

I am writing in my capacity as the Legislative Chairman of the Building Owners and Managers Association of Greater Baltimore (BOMA) to respectfully request an unfavorable report on House Bill 49.

BOMA, through its nearly 300 members, represents owners and managers of all types of commercial property, comprising 143 million square feet of office space in Baltimore and Central Maryland. Our members' facilities support over 19,000 jobs and contribute \$2.5 billion to the Maryland economy each year.

This legislation is a direct outgrowth of the Climate Solutions Now Act, (Senate Bill 528) from the 2022 session of the Maryland General Assembly. On behalf of our community of owners and operators of commercial and industrial buildings, BOMA was deeply involved in that legislative process. We have since been involved in the process of regulatory development at the Maryland Department of the Environment to implement the provisions of Senate Bill 528.

With regret, we note that the final regulations adopted by the Department on this subject are unworkable for our members. Therefore, BOMA has joined a group of other real property owners in our State who are similarly affected, and we are currently engaged in litigation with the Department.

Our differences with the Department have only deepened with the introduction of House Bill 49. In particular, we note the compliance requirements based on "energy use intensity," which may be found, for example, on page 3, line 8, and page 4, line 23. In the statutory/regulatory scheme, energy use intensity (EUI) is directly related to site energy use. EUI is intended to calculate such use. Unfortunately, a building-by-building assessment would be required to achieve this goal, and there are literally thousands of potentially covered buildings in this category. There will almost certainly be disputes about the measure of EUI with respect to some buildings, in addition to the unknown, but considerable, length of time required to complete such an assessment.

Furthermore, both MDE regulations in House Bill 49 contemplate the use of an alternative compliance mechanism to be used when a building does not meet its EUI target. The formula for determining an

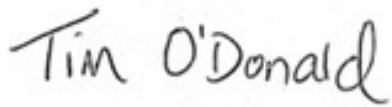
alternative compliance payment is yet to be determined. Essentially, this mechanism creates a penalty of unknown magnitude on property owners, which is fundamentally unfair.

The nature of the litigation in which BOMA and other commercial and industrial property owners are engaged is itself a fundamental issue. The building owner group has challenged the authority of the State to regulate in this area at all, based on its claim of preemption under federal law. We note that several similar lawsuits have been filed throughout the United States, and we believe it is likely that the preemption issue will be carried forward to appellate courts within the federal judicial system.

For these reasons, BOMA believes that the introduction of House Bill 49 is, at best, premature. We believe the better approach is to permit the resolution of the preemption issue in court, and that further legislation on this subject be deferred until that issue is resolved.

We therefore respectfully request an unfavorable report on House Bill 49.

Very truly yours,

A handwritten signature in black ink that reads "Tim O'Donald". The signature is written in a cursive, slightly slanted style.

Tim O'Donald
Chair, BOMA Legislative Committee

cc: Bryson Popham