



**COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004**

Charles Allen
Councilmember, Ward 6
Chairperson
Committee on Transportation and the Environment

Committee Member
Business and Economic Development
Health
The Judiciary & Public Safety

May 1, 2024

Nyasha Smith, Secretary
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Secretary Smith:

Today, I am introducing the **“Building Energy Performance Standards Amendment Act of 2024.”** Please find enclosed a signed copy of the legislation.

The District has been a leader in climate action and green building policy since the passage of the Green Building Act in 2006. Building upon this important work, the Council led the nation by passing the CleanEnergy DC Omnibus Amendment Act of 2018, which set up the Building Energy Performance Standards (“BEPS”) Program, requiring buildings to reduce their energy use and emissions over time. The CleanEnergy DC Omnibus Amendment Act of 2018 also created the BEPS Task Force, whose members include the Department of Energy and Environment (“DOEE”), the Department of General Services, the Department of Housing and Community Development, affordable housing developers, representatives from rent-controlled and market-rate apartment and commercial buildings, and a representative from the Apartment and Office Buildings Association. The Task Force has been meeting twice a month since late 2019 to advise on the implementation of the BEPS Program, engage with stakeholders, and advise DOEE on the design of the program and develop technical support documents.

The Task Force has recently recommended legislative and regulatory amendments to the BEPS Program, developed by a consensus process and approved by the Task Force via majority vote. One of these recommendations, to delay the energy usage and third-party verification deadline by 90 days to July 1, 2024, was recently approved by the Council. This legislation reflects the other recommendations from the Task Force:

- *Replace references to “alternative compliance penalty” with “alternative compliance payments”.* This change will enable the costs of non-compliance to be passed through to commercial tenants, subject to the terms of the lease.

- *Create a whole-cycle exemption for vacancy and financial distress.* Buildings subject to BEPS must improve relative to their baseline performance. If the building was not sufficiently occupied during the baseline years, then requiring improvements relative to that baseline is unfair if the building was vacant. Additionally, a building in serious financial distress is highly unlikely to get on strong financial footing and undertake the improvements needed to meet BEPS, all within three years.
- *Add language that specifically confirms that mechanical and electrical upgrades made in order to comply with BEPS are exempt from stormwater regulations.* Currently, compliance with BEPS may accrue sufficient project costs to trigger stormwater regulations and Green Area Ratio compliance, particularly for undervalued properties and those with a commitment to work with District-based union vendors and contractors. Adding stormwater or Green Area Ratio scope may make such projects unaffordable altogether, undermining the District's decarbonization commitments. The amendment is specific to electrical and mechanical upgrades, as any site disturbance should still be subject to stormwater requirements and erosion and sedimentation control.
- *Amend the second BEPS cycle to start on January 1, 2028, and the third BEPS cycle to start on January 1, 2034.* The first BEPS compliance cycle ends December 31, 2026, with end-of-cycle reporting due on April 1, 2027. The second cycle of BEPS is currently scheduled to begin on January 1, 2027, which does not provide a gap year in which DOEE may assess benchmarking data and reset the standard. This amendment provides a sufficient gap year between the start of both cycles.
- *Streamline the benchmarking process.* Specifically, this bill would make it clear that a consulting firm, other than the owner or property manager, may also conduct verification for completed benchmarking. The legislation would also give DOEE the authority to exempt both the building owner and its benchmarking consultant if they have a demonstrated history and track record of data integrity. Lastly, the bill would, for ownership organizations with more than 20 buildings, modulate third-party verification based on portfolio size to allow for verification of a percent or sample of total buildings, as established by DOEE, or to allow for verification to be completed on a rolling basis, to level out the effort and expense to building owners and their staff.

Please feel free to reach out to me or Kevin Whitfield, Committee Director for the Committee on Transportation and Environment, at kwhitfield@dccouncil.gov, with any questions or for additional information.

Sincerely,



Charles Allen, Ward 6 Councilmember
Chair, Committee on Transportation & the Environment



Councilmember Charles Allen

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the CleanEnergy DC Omnibus Amendment Act of 2018 to align the District’s Building Energy Performance Standards with the recommendations from the Building Energy Performance Standards Task Force, to delay the start of the second and third compliance cycles by one year, to require DOEE to establish building energy performance standards for the second and third compliance cycles no later than January 1, 2028, and every 6 years thereafter, to clarify that a period of time for which a public health emergency was in effect shall not count toward the 3-year delay for a qualifying building to come into compliance, to create a whole-cycle exemption for qualifying buildings that are vacant or in financial distress, to change the term “alternative compliance penalties” to “alternative compliance payments”, and to require DOEE and the Zoning Commission to amend regulations to confirm that mechanical and electrical upgrades made to comply with the District’s Building Energy Performance Standards are exempt from stormwater and Green Area Ratio requirements; and to amend the Green Building Act of 2006 to change the benchmark reporting and verification deadline from April 1 to May 1, to clarify that a consulting firm other than the owner or property management company may conduct verification if the firm completed the benchmarking for the building, to exempt a building owner from third-party verification requirements when both the owner and its benchmarking consultant have a demonstrated history and track record of data integrity, and to allow DOEE to permit third-party verification requirements to be modulated in detail or timing.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Building Energy Performance Standards Amendment Act of 2024”.

Sec. 2. Section 301 of the CleanEnergy DC Omnibus Amendment Act of 2018 (D.C. Law 22-257; D.C. Official Code § 8-1772.21), is amended as follows:

(a) Subsection (a) is amended as follows:

41 (1) Paragraph (2) is amended by striking the phrase “Beginning January 1, 2027”
42 and inserting the phrase “Beginning January 1, 2028” in its place.

43 (2) Paragraph (3) is amended by striking the phrase “Beginning January 1, 2033”
44 and inserting the phrase “Beginning January 1, 2034” in its place.

45 (b) Subsection (b)(1)(A) is amended to read as follows:

46 “(b)(1)(A) No later than January 1, 2021, subsequently by January 1, 2028, and every 6
47 years thereafter, DOEE shall, by rulemaking or publication on the DOEE website, establish
48 property types and building energy performance standards for each property type, or an equivalent
49 metric for buildings that do not receive an ENERGY STAR score.

50 (b) Subsection (e) is amended as follows:

51 (1) Paragraph (1) is amended by striking the phrase “financial distress, change of
52 ownership, vacancy, major renovation, pending demolition, or other acceptable circumstances
53 determined by DOEE by regulation” and inserting the phrase “change of ownership, major
54 renovation, pending demolition, or other acceptable circumstances determined by DOEE by
55 regulation; provided, that a period of time for which a public health emergency has been declared
56 by the Mayor pursuant to section 5a of the District of Columbia Public Emergency Act of 1980,
57 effective October 17, 2002 (D.C. Law 3-149; D.C. Official Code § 7-2304.01), shall not count
58 toward the 3-year delay for a qualifying building to come into compliance.”.

59 (2) A new paragraph (1A) is added to read as follows:

60 “(1A) DOEE shall establish exemption criteria for qualifying buildings to be
61 exempt from the building energy performance requirements for a given compliance cycle if the
62 owner demonstrates, to the satisfaction of DOEE, financial distress, the qualifying building was
63 below sufficient occupancy thresholds to establish an appropriate baseline energy performance for

64 either of the two years preceding the compliance cycle, or other acceptable circumstances by
65 DOEE by regulation.”.

66 (c) Subsection (g) is amended by striking the phrase “alternative compliance penalty
67 established by DOEE. Penalties” and inserting the phrase “alternative compliance payment
68 established by DOEE. Payments” in its place.

69 (d) A new subsection (l) is added to read as follows:

70 “(l) DOEE and the Zoning Commission shall amend appropriate regulations to remove the
71 cost of interior mechanical and electrical upgrades that are undertaken for the express purpose of
72 compliance with the requirements of this section from calculations to determine whether the
73 project triggers Stormwater and Green Area Ratio requirements.”

74 Sec. 3. Section 4(c)(2) of the Green Building Act of 2006, effective March 8, 2007 (D.C.
75 Law 16-234; D.C. Official Code § 6-1451.03(c)(2)) is amended as follows:

76 (a) Subparagraph (A)(ii)(I) is amended by striking the phrase “April 1 of the respective
77 following year. In 2011 only” and inserting the phrase “May 1 of the respective following year. In
78 2011 and 2024 only” in its place.

79 (b) Subparagraph (F) is repealed.

80 (c) A new subparagraph (F-i) is added to read as follows:

81 “(F-i) In 2024, 2027, and every 6 years thereafter, the owner or their
82 designee, shall perform a third-party verification of its benchmark and ENERGY STAR statements
83 in accordance with the requirements specified by DOEE and subject to the following conditions:

84 “(i) For the purposes of this subparagraph, an eligible third-party
85 verifier shall include an individual or company who submitted the benchmark and ENERGY
86 STAR statements of performance for the building, in accordance with requirements specified by

87 DOEE, unless DOEE issues a finding that does not permit a given individual or company to
88 perform the third-party verification; provided, that the owner or manager of the property, or an
89 employee of the owner or manager of the property, shall not serve as a third-party verifier.

90 “(ii) DOEE may exempt a building owner from select third-party
91 verification requirements when all parties have a demonstrated history and track record of data
92 integrity; and

93 “(iii) For ownership organizations with more than 20 buildings,
94 DOEE may permit third party verification requirements to be modulated in detail or timing, subject
95 to requirements DOEE may establish.”.

96 Sec. 4. Fiscal impact statement.

97 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
98 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
99 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

100 Sec. 5. Effective date.

101 This act shall take effect following approval by the Mayor (or in the event of veto by the
102 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
103 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,
104 1973 (87 Stat. 788; D.C. Official Code §1-206.02(c)(1)), and publication in the District of
105 Columbia Register.