

ANOTHER JURISDICTION PASSES A LAW MANDATING ATTAINMENT OF BUILDING ENERGY PERFORMANCE STANDARDS

Hodgson Russ Renewable Energy Alert
September 12, 2022

The County Council of Montgomery County, Maryland, signed Bill 16-21, Building Energy Performance Standards (“BEPS”), into law on May 2, 2022 (“BEPS Law”), which took effect on July 31, 2022. The BEPS Law amends the County’s current Building Energy Benchmarking Law (“Benchmarking Law”), which requires owners of covered buildings (50,000 gross square feet (“gsf”) or larger) to report annual energy usage of the building to the Montgomery County Department of Environmental Protection (“DEP”). The BEPS Law applies to covered buildings, which is now defined as 25,000 gsf or larger and includes multifamily buildings.

The BEPS Law categorizes buildings into groups, and each group is assigned a long-term performance standard that buildings within the group must meet by a specified deadline. Buildings will also be required to meet an interim standard within five years to demonstrate progress toward the long-term goal. Groups 1 and 2, already covered by the Benchmarking Law, consist of County-owned and privately owned nonresidential buildings of at least 50,000 gsf. Group 3 comprises County-owned and privately owned nonresidential buildings between 25,000 and 50,000 gsf as well as buildings of at least 50,000 gsf that were previously exempt from coverage under the Benchmarking Law. Group 4 includes residential buildings of at least 250,000 gsf, and Group 5 includes residential buildings between 25,000 and 250,000 gsf. Benchmarking requirements and the BEPS are not applicable to exempt buildings, which include covered buildings where more than 50 percent of the total gsf is used for (1) public assembly in a building without walls; (2) industrial uses where most of the energy is used for manufacturing, electricity or thermal energy generation for offsite use, or other process loads; or (3) infrastructure for transportation, communications, or utility uses. There are no categorical exemptions for certain building owners, such as affordable housing, small businesses, places of worship, and non-profit organizations.

The BEPS are established as site energy use intensity (“EUI”) standards, which measure how efficiently a building uses energy and how much energy is actually under the control of the building owner. The EUI standard is calculated by dividing the building’s total annual energy use (as reflected in the building’s annual energy usage report) by the gross floor area. This year, the County will establish a BEPS

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baseline for County-owned buildings of at least 50,000 gsf and buildings in Groups 1 and 2, which will go into effect January 1, 2024. Buildings in these groups will need to meet the interim BEPS by December 31, 2028 and the final BEPS by December 31, 2033. Buildings in Groups 3 and 4, which are only now subject to the Benchmarking Law, must start reporting annual energy usage by June 1, 2023 and will receive a BEPS baseline in 2024. These BEPS will go into effect on January 1, 2026, and the covered buildings will need to meet the interim BEPS by December 31, 2030 and the final BEPS by December 31, 2035. Lastly, buildings in Group 5 must start reporting annual energy usage by June 1, 2024 and will receive a BEPS baseline in 2025. BEPS for this building group will go into effect on January 1, 2027, and the covered buildings will need to meet the interim BEPS by December 31, 2031 and the final BEPS by December 31, 2036.

To determine compliance with the BEPS Law, the annual benchmarking data submitted by a covered building on June 1 pursuant to the Benchmarking Law will be assessed for compliance with the interim or long-term BEPS. If a building does not meet the applicable BEPS due to economic or other reasons outside the building owner's control, the owner may submit a Building Performance Improvement Plan to achieve compliance. The criteria a building owner must meet to qualify for this modified compliance will be determined by regulation. Such plan will provide for steps and a timeline to achieve the necessary improvements to meet the BEPS.

Hodgson Russ Takeaways

This law is an example of another local jurisdiction taking it upon itself to address the climate crisis through regulation of GHG emissions from buildings. The BEPS Law takes a different approach than other building emissions regulatory schemes, such as New York City's Local Law 97, by mandating compliance with energy performance standards rather than capping emissions at a certain limit. Though different in structure, the BEPS Law actually clarifies an issue currently left unanswered by Local Law 97: the role of onsite solar energy in determining compliance. The BEPS Law includes renewable energy generation into the BEPS compliance determination and contemplates use of renewable energy to complement or substitute energy efficiency upgrades and electrification measures^[1]. Ultimately, enactment of this law is further proof that regulation of building emissions is becoming the tool of choice for municipalities to address the global climate crisis locally.

If you have any questions about local building decarbonization efforts, contact [Daniel Spitzer](#) (716.848.1420), [Carmine Castellano](#) (646.218.7571), [Alicia Legland](#) (518.433.2416), or any member of our [Renewable Energy](#) practice.

[1] See ICF Consultants, *Montgomery County Building Energy Performance Standard, Allowance for Renewable Energy Technical Report and Recommendations* (July 2022) at 1.