

BEPSDC Task Force

February 4, 2020



@DOEE_DC
#BEPSSDC

*** DEPARTMENT
OF ENERGY &
ENVIRONMENT
GOVERNMENT OF THE DISTRICT OF COLUMBIA

WE ARE
WASHINGTON
DC GOVERNMENT OF THE
DISTRICT OF COLUMBIA
MURIEL BOWSER, MAYOR

AGENDA

1. Administrative Items
2. Review Items from Previous Meeting
3. Penalties and Enforcement
4. Exemption Criteria and Process
5. Announcements

ROLE OF TASK FORCE

- Advise DOEE on creation of an implementation plan for the Building Energy Performance Program;
- Recommend amendments to proposed regulations issued by DOEE; and
- Recommend complementary programs or policies.
- Rule of Thumb: Focus on 95% for initial meetings, 5% issues moved to Bike Rack
- If topic needs in-depth technical discussion, anyone can make the suggestion to move it to a sub-committee

DECISION POINTS FROM LAST MEETING TO ADDRESS NEXT MEETING

- Performance pathway
- Alternative compliance pathway
- Standard set higher the local median

REQUEST FOR APPLICATIONS FOR COST/BENEFIT STUDY

The Department of Energy and Environment (the Department) seeks eligible entities to generate and communicate study results regarding the District's Building Energy Performance Standard Program (BEPS) to District residents and building owners. The amount available for this grant announcement is up to \$150,000. The deadline for application submissions is March 2, 2020.

Page 22: “An applicant should also propose how it will seek and use input from DOEE and from the BEPS Task Force in creation of the specifications and work plan of the assessment.”

Full RFA text found here: <https://doee.dc.gov/page/grants-and-other-funding>

SUBCOMMITTEE IDEAS

- Public Sector
- 5% issues (Equivalent Metric, Custom Property Type groupings)
- Others?

MEETING SCHEDULE

- December 10 – Setting the Stage
- January 7 – Property Types, Equivalent Metric
- January 21 – Performance Path, Other Pathways
- February 4 – Penalties and Enforcement, Exemption Criteria and Process
- February 18 – Campus Standard, Other Items?

PENALTY LANGUAGE FROM CEDC ACT

(g) Buildings failing to comply with the building energy performance requirements at the end of the 5-year compliance period shall pay an alternative compliance penalty established by DOEE. Penalties collected pursuant to this provision shall be deposited into the Sustainable Energy Trust Fund.

(i) DOEE may impose civil infraction penalties, fines, and fees as sanctions for a violation of this section or a regulation issued pursuant to this section, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 et seq.).

WORKING GROUP SCENARIOS

<u>Scenario 1</u>	<u>Scenario 2</u>	<u>Scenario 3</u>	<u>Scenario 4</u>
<p>Fines based on a building's relative distance from the standard at the end of the compliance period. An office building that is 5 points below the ENERGY STAR Score standard will be fined 5 times \$x for failure to comply with BEPS.</p>	<p>Fines based on a building's relative distance from completing one of the pathways. Each pathway would have its own fining schedule.</p> <ul style="list-style-type: none">• Performance: A building that reduced their EUI by 18% would be fined 2 times \$x for failure to meet the 20% reduction target.• Prescriptive: A building that implemented 3 out of 5 required efficiency measures will be fined 2 times \$x for failure to meet the prescriptive target.	<p>Flat fine for failure to comply with BEPS. DOEE will set the fine at a level in which the relative cost of non-compliance is higher than the cost of compliance.</p>	<p>Fines based on square footage. Larger buildings would face larger total fines than smaller buildings. DOEE will set the fine at a level in which the relative cost of non-compliance is higher than the cost of compliance.</p>

WORKING GROUP KEY TAKEAWAYS

- Most preferred fines based on square footage
- Most preferred distance from standard in EUI terms to determine fine
- Tenant issues when it comes to behavior

FREQUENCY/TIMING QUESTIONS FROM WG

- Would the fines be at the end of the 5 year period as a onetime thing? Or for each year after that?
- Is this a one-time fine? They feel like it should be annual or every 5 years.
- How frequent can the fines be revised in case we are setting the fines are the wrong level?
- How frequent would we increase the fines? How often would we reset the fines if we are not seeing the energy savings we needed?

NHT/HAND RECOMMENDATIONS

DOEE should take full advantage of the flexibility allowed under the law to accommodate the unique challenges affordable housing owners face.

Financial Constraints incl.:

- Limited access to upfront capital;
- Underwritten to serve very low-income households;
- Restrictions imposed by existing mortgage holders that limit an owner's ability to take on new debt; and
- Inability to recoup the costs of building upgrades due to utility allowance requirements.

Technical Constraints incl.:

- Limited staff capacity and resources;
- Lack of familiarity with energy efficiency measures;
- Building retrofits can take a considerable amount of time to complete; and
- Lack of coordinated and easy to navigate efficiency incentive programs can also increase costs for owners

NHT/HAND RECOMMENDATIONS NON-COMPLIANCE PENALTIES

- **Base Fines on the Distance from Reduction Requirement** - assess fine amounts based on how close the building owner is to achieving the required energy savings or to installing the required prescriptive measures.
- **Waive Fines if an Owner Demonstrates a Plan to Comply** - If an owner can demonstrate a plan to comply but has not completed them in time. Outline what qualifies as sufficient evidence for the waiver.
- **Institute an Appeals Process** - The law does not require this, but an appeals process needs to be created for clarity and accountability.
- **Provide Flexibility for Resident Behavior** - Building owners should not be penalized if resident energy usage remains high despite installing energy-efficient measures and educating residents about how they can reduce their energy consumption.

FINE STRUCTURE FROM OTHER JURISDICTIONS WITH BEPS

New York City Performance Law

- \$268 per ton of Carbon over cap
- Example 185 E 85th Street:
 - Gross Floor Area: 474,122 ft²
 - Carbon intensity, current = 0.00600 tCO₂e
 - Carbon intensity, allowed 2024-2029 = 0.00675 tCO₂e **pass**
 - Carbon intensity, allowed 2030-2039 = 0.00407 tCO₂e **fail**
 - Carbon in excess of 2030-2039 limit = 915.05546t tCO₂e/yr
 - Annual fine @ \$268/ton = \$245,234.86
 - Total fine between 2030-2039 = \$2,452,348.63

Washington State Performance Standard

- \$5,000 + up to \$1 per square foot
- Incentive of \$0.85 per square foot for buildings that exceed target by 15 kBtu/square foot.

FINE STRUCTURE FROM OTHER CITIES WITH BENCHMARKING+

New York City Audit and Retro-commissioning program

- \$3,000 - \$5,000 penalty for all buildings

Seattle Tune-up program

- \$5,000 - \$20,000 penalty for buildings 200,000 square feet +
- \$2,500 - \$10,000 penalty for buildings 100,000 – 199,999 square feet
- \$2,000 - \$8,000 penalty for buildings 50,000 – 99,999 square feet

Chicago Verification and Labelling program

- \$100 initial and \$25 daily

San Francisco Audit program

- \$100 daily (max 25 days) for buildings 50,000 square feet +
- \$50 daily (max 25 days) for buildings less than 50,000 square feet

Philadelphia Tune-up program

- \$2,000 initial and \$500 daily

NON-FINANCIAL PENALTIES

- Not being able to pull new permits with DCRA
- Have to attend training school
- Dedicate funds to making improvements

EXEMPTION LANGUAGE FROM CEDC ACT

(e)(1) DOEE shall establish exemption criteria for qualifying buildings to delay compliance with the building energy performance requirements for up to 3 years if the owner demonstrates, to the satisfaction of DOEE,

- financial distress,
- change of ownership,
- vacancy, major renovation,
- pending demolition,
- or other acceptable circumstances as determined by DOEE by regulation.

AFFORDABLE HOUSING EXEMPTION LANGUAGE TO DELAY COMPLIANCE

(2) DOE may establish an exemption criterion for qualifying affordable housing buildings to delay compliance with the building energy performance requirements for more than 3 years; provided, that the owner demonstrates, to the satisfaction of DOE,

- financial distress,
- change of ownership,
- vacancy, major renovation,
- pending demolition,
- or other acceptable circumstances as determined by DOE by regulation.

NHT/HAND RECOMMENDATIONS EXEMPTION CRITERIA

- **Ability to Pay for Upgrades/Financial Hardship** - Considerations should include if building owner has access to sufficient reserves or net operating income to cover the cost of upgrades and whether the building owner can feasibly take on new debt.
- **Financing Cycle** - Consider financing cycles of affordable multifamily housing and limited access to capital between financing cycles. Consider a delay in compliance if recapitalization is expected within five years of the compliance deadline.
- **Additional Flexibility needed?**
 - For building owners that pursue a recapitalization but aren't successful in securing new financing.
 - For properties that have completed a substantial rehabilitation but are still not performing to the standard.

NHT/HAND RECOMMENDATIONS EXEMPTION CRITERIA (cont.)

- **Individually-metered, Project-based Rental Assistance Properties** – Owners of HUD-subsidized properties where tenants have utility allowances are unable to recoup the cost of energy efficiency upgrades. Grants will need to be provided to cover the cost of in-unit efficiency upgrades.
- **Public Housing** - Public housing larger than 10,000 square feet affected in 1st cycle. 6,800 units affected. Median 2018 Energy Star score for public housing is below the median for all multifamily rental housing.
- **Flexibility for Residents Exercising their Rights Under the Tenant Opportunity to Purchase Act (TOPA)**- Residents who purchase their building should be granted additional time to comply with BEPS. Groups face many challenges when taking over operations and should be afforded additional time to understand the requirements of the law and access the financial and technical assistance they will need to comply.

GREEN BUILDING ACT EXEMPTION LANGUAGE

The Director of the District Department of the Environment (DDOE) may, on a case by case basis, grant an exemption from any requirement of the Act upon a showing of good cause by the applicant. An application for exemption shall be submitted, through DDOE, to the Green Building Advisory Council (GBAC) for comments and recommendation.

Good cause for granting an exemption under subsection 3511.1 means one of the following:

- a) Substantial evidence of a practical infeasibility or hardship in meeting a required green building standard;
- b) A determination that the public interest would not be served if the applicant had to comply with the requirement;
- c) LEED certification is not available for the building type that is subject to the Act's requirements; or
- d) The building subject to the Act's requirements is unoccupied.

BEPS EXEMPTION STRUCTURE FROM OTHER JURISDICTIONS

New York City Performance Law

- Carve out for Affordable housing
- Change in ownership or building class
- Financial Hardship and not eligible for any support programs
- Not enough RECs on the market

Washington State Performance Standard

- No Certificate of Occupancy
- Less than 50% occupied
- Industrial and Agricultural Buildings
- Financial Hardship

EXEMPTION STRUCTURE FROM OTHER CITIES WITH BENCHMARKING+ PROGRAMS

New York City Audit and Retro-commissioning program

- None

Seattle Tune-up program

- Change of ownership, less than 50% occupied, buildings under improvement, demonstrated 15% energy savings

Chicago Verification and Labelling program

- Financial Hardship, data centers, television studios, or trading floors

San Francisco Audit program

- New Construction, LEED EBOM, Financial Distress, ENERGY STAR Certified, Three or More buildings under

Philadelphia Tune-up program

- ENERGY STAR Score above 75, green certification, participated in utility retro-commissioning programs, completed retro-commissioning with documentation, demonstrated 15% energy savings, ASHRAE II audit, received certificate of occupancy

NEXT TASK FORCE MEETING

February 18

- Possible decision points for beginning of next meeting:
 - Penalty Structure?
 - Non-financial penalties?
 - Exemption criteria?

- What kind of analysis do we need to prepare for February 18th?
 - Performance pathway
 - Alternative compliance pathways
 - Standard set higher the local median



BIKE RACK REVIEW



ANNOUNCEMENTS



SUPPORTING SLIDES

MULTIFAMILY HOUSING COMPARISON

City	Number of Buildings	Median ENERGY STAR Score	Median Source EUI (kBtu/sq ft)
Los Angeles	3,191	67	69
Boston**	648	63	
Chicago	1,378	60	125
New York	17,619	52	122
Philadelphia	404	56	111
San Francisco*	-	-	-
Seattle	1,763	78	77
DC	665	66	112

*-San Francisco does not current disclose Multifamily Housing data

**- Boston does not disclose their Source Energy figures

OFFICE COMPARISON

City	Number of Buildings	Median ENERGY STAR Score	Median Source EUI (kBtu/sq ft)
Los Angeles	863	74	125
Boston**	278	70	
Chicago	346	59	170
New York	2269	58	163
Philadelphia	180	63	164
San Francisco	545	80	103
Seattle	484	73	149
DC	529	69	161

** - Boston does not disclose their Source Energy figures

HOTEL COMPARISON

City	Number of Buildings	Median ENERGY STAR Score	Median Source EUI (kBtu/sq ft)
Los Angeles	77	52	158
Boston**	55	58	
Chicago	82	44	210
New York	461	31	212
Philadelphia	50	47	187
San Francisco	104	73	68
Seattle	79	71	148
DC	105	48	187

** - Boston does not disclose their Source Energy figures