

February 24, 2016

Attn. Grant Crack, MPP, Chair
Standing Committee on General Government
Ontario Legislature
Room 1405, Whitney Block, Queen's Park
Toronto, ON
M7A 1A2

Dear Mr. Grant Crack, MPP, Chair

RE: Bill 135, An Act to amend several statutes and revoke several regulations in relation to energy conservation and long-term energy planning

On behalf of BOMA Toronto and its membership, I would like to thank the Standing Committee on General Government for this opportunity to provide our feedback on the proposed amendments to the Green Energy Act, 2009.

BOMA Toronto is a not for profit industry association established in 1917. BOMA Toronto represents over 80% of all commercial and industrial real estate companies in the GTA and beyond. Our membership includes all leading building owners, property and facility managers, developers, corporate facility managers, leasing professionals, as well as service providers that cater to the commercial real estate industry. Our mission is to develop, promote and advance best management practices in the real estate industry through advocacy, education and networking.

As a major stakeholder in the province's Commercial Real Estate industry, we are fully supportive of any initiative aimed at promoting building performance and environmental stewardship. We also welcome the Minister's customer-centric approach to the Province's Long-Term Energy Plan.

Our members own or manage buildings across Ontario. As such we ask this Committee that the discussion related to energy and water reporting be maintained at the provincial level and not be relegated to individual cities or municipalities so that our members are not subject to the risk of coping with varying degrees of reporting and disclosure requirements from different Ontario jurisdiction.

While we understand the benefits of benchmarking and how the reported consumption data could be used by the province to help improve the energy infrastructure and design better programs for the consumers, we recommend that it is done in a manner that is efficient, practical and does not impede on the business interests of commercial real estate owners and manager and their right to privacy. As such our role as the representative and advocate of all commercial real estate owners and managers, is to work with the Province of Ontario and other stakeholders to ensure that all of the industry concerns are addressed adequately, that the final outcome is beneficial to all parties, and that the overall objectives are achieved and sustained.

I have included within the package before you, copy of BOMA Toronto's Energy and Water Reporting and Benchmarking Policy Document. The recommendations outlined within our Policy Document is built on consensus from our ERB Task Force which is comprised of senior representatives from all the leading commercial real estate owner/manager firms in Ontario. Considering that many of these firms also own and manage facilities across Canada, our Policy Document also represents our national sentiments with respect to this subject.

In order for the proposed amendments to be meaningful and deliver lasting results, it is essential to understand how the various types of buildings are managed and operated, the nature of business relationships between the landlords and tenants, and the inherent issues related to gaining access to energy data (from tenants or the utilities). Also in the case of industrial and retail buildings there are legitimate privacy concerns with sharing or releasing the utility information because the amount of energy used by many businesses is part of their competitive advantage (or disadvantage, as the case may be), and as such, there is a real sensitivity to collecting and sharing this data. Tenants under these circumstances are metered directly by the distributor, and the landlords are usually not privy to the energy consumption data of tenants. In this regard BOMA is supportive of proposed amendment in Section 7.3 (2), however in the interest of landlords of industrial and retail buildings we recommend that the language be extended to direct distributors, upon request, to provide the consumption data to the landlord in an aggregate format for a given address. This would allow the distributor to provide landlords access to the consumption data for the whole building while maintaining the anonymity of individual businesses or tenants housed within that building and their consumption data private and confidential.

We would like to address the proposed amendments within the context of two main areas - Reporting and Disclosure.

REPORTING

BOMA is seeking clarity of the term “prescribed person” in Section 7 (1) of proposed amendments. Is the “prescribed person” to mean landlord or tenant or both, as each interpretation would carry different implication depending on the asset type?

Considering the disparity in the way that buildings of certain types, size and asset class are managed, BOMA Toronto recommends that the implementation of the ERB regulation be phased-in in order to allow sufficient time for the industry to fully understand the requirements and take the necessary actions to become compliant. Special consideration is required for industrial and retail buildings because of the reasons indicated earlier. A set of nine recommendations (including defined circumstances for special exemptions) are provided in Section 1 of our Policy Document.

With respect to Section 7.1 of the proposed amendments, additional requirements for CDM plans or energy conservation in general under the proposed regulation should not become an administrative burden. The regulation should avoid duplication of initiatives that are already underway and should not impose additional costs. Furthermore, such additional requirements should not impede great efforts and initiatives that are already being undertaken.

We believe that this proposed requirement should be kept outside the Green Energy Act. There is no value in expecting landlords to submit copies of their CDM Plans or Energy Assessments as the province neither has the resources to review such submitted materials nor does it have the resources to ensure such plans are implemented. Since implementation of such plan is influenced by many factors including previously planned work, tenant vacancy or turnover, etc. it would be very difficult to enforce. So why impose an impractical requirement? However, should the government insists on making energy audit as part of the reporting requirement, then we suggest such requirement be waived if the building under consideration holds a valid BOMA BEST[®] certification. Reporting of energy and water consumption, energy audit, and a third-party on-site verification are among the basic certification requirements for BEST[®]. Section 4 of our Policy Document covers audit requirement in greater detail.

DISCLOSURE

Our assessment of similar policies in the various US jurisdictions reveals that the intent of such policies is not to hold landlords responsible for improving the performance of their buildings, but rather to account for and to track energy consumption and hope that public disclosure of certain energy data would motivate landlords to improve the performance of their buildings. In the US, such policies do not enforce performance improvement and the only measure of compliance is meeting the reporting deadline.

BOMA Toronto does not endorse punitive methods or any form of public shaming (through disclosure of specific performance metric) to improve energy performance. We believe in bringing about change through education and sustained market/sector engagement.

As many energy or performance data elements are considered strategic information, building owners' and tenants' need to keep certain strategic details confidential must be respected.

We understand the benefits of monitoring and tracking of energy use and benchmarking buildings, and we are aware such strategy is shown to improve building performance over time, however there has been no empirical evidence to suggest that publicly disclosing energy performance leads to the same outcome according a study from Harvard University. However, some degree of disclosure (perhaps better defined as social benchmarking) has been shown to impact consumption behaviour. Under such circumstance it is reasonable to expect the owners and managers of large commercial properties to share some of the performance data, but every effort must be made to protect their privacy and business interests as well as that of the businesses housed within the buildings. As such we recommend disclosure of only certain metrics that are relevant to achieve the objective of the Ministry as outlined in Section 2.2 of our Policy Document. Section 2 in general provides an array of recommendations including provisions for exclusion under special circumstances.

CONCLUSION

We believe that the success of the ERB regulation should be measured by the level of compliance and its impact on reducing consumption over time. This can only be achieved if the regulation is consistent (subject to idiosyncrasies of various building types), fair, and has the support of the end users as well as other key industry stakeholders and partners. There should also to be sufficient resources allocated for education and market transformation.

BOMA Toronto, as a major stakeholder and the representative of the commercial real estate industry, is willing to work with the Ontario government and the relevant Ministries to make sure that the final outcome is amicable to all parties, and is sustained over time.

If you have any questions please don't hesitate to contact me. Thank you.

Regards,



Bala Gnanam

Director, Sustainable Building Operations & Strategic Partnerships