

Short Model BPS Law

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Preface

[Building performance standards](#) (BPS) are a critical policy tool for jurisdictions with ambitious climate goals. Buildings account for a significant segment of total emissions at local and state levels. As local and state governments lead climate action, building performance will need to improve to meet climate goals. A BPS mandates levels of performance that reduce energy use and can address a variety of other social priorities such as health, economic development, resiliency, housing affordability, and racial equity. IMT strongly encourages governments to keep these priorities at the forefront of building performance discussions and action.

In January 2021, IMT published its [Full Model Building Performance Standard Law](#), a 25-page starting point for jurisdictions legislating BPS. In response to requests from governments and stakeholders seeking a more streamlined model, IMT created this Short Model BPS Law. Local characteristics including political support, election schedules, and legislative norms, may prompt policy-makers toward more or less detailed legislation. This Short Model BPS Law establishes broad goals and an equitable process by which stakeholders and one or more agencies will work together after passage to craft BPS rules to achieve shared goals. The streamlined law, and its greater reliance on rulemaking, make it particularly well suited for states passing a BPS.

This law benefits from lessons learned from the work of cities and states such as Denver, St. Louis, Colorado, and Washington. Like IMT's Full Model BPS Law, the Short Model BPS Law is a living document that will be updated based on lessons learned and feedback from experts, governments, community-based organizations, business, and other stakeholders. IMT encourages policymakers to modify or remove language as necessary to reflect policy priorities and circumstances. Governments should work with community members, particularly those who may often be excluded or marginalized, on policy priorities and structure; seek input from professionals with expertise in relevant fields, such as real estate, building operations, and workforce development; and develop performance standards specific to the community needs. Lawmakers should also consult with legal experts to tailor their legislation to the authority of their jurisdiction.

This document assumes that your jurisdiction already has a benchmarking and transparency law. If not, then see the [Model Benchmarking Law](#), developed by IMT and NRDC, for additional language that should be incorporated into this law and/or subsequent rulemaking.

Ensuring equity is centered in rule-making

BPS are exceptionally powerful policies. Like other policies, BPS can be designed in ways that benefit frontline communities—defined as communities experiencing climate change first and most severely—or risk enlarging existing inequities. Great care must be taken to employ equitable processes to empower communities to co-design BPS. To maximize equitable outcomes, three guiding principles must be built into any BPS and into the processes for developing and implementing it:

Statement of Purpose:

The purpose of this law is to improve the performance of the buildings of [jurisdiction] and reduce their operating costs while conserving resources for the equitable benefit of the residents of [jurisdiction] and to mitigate climate change.

Sec.1. Definitions:

ALTERNATIVE COMPLIANCE PAYMENT (ACP) means a payment established by the DEPARTMENT that an OWNER pays to comply with this law in lieu of a COVERED PROPERTY achieving required levels of performance.

Discussion: The use of the term “ALTERNATIVE COMPLIANCE PAYMENT” instead of the term “fine” or “penalty” will facilitate OWNERS passing through some or all of the costs to commercial tenants (does not apply to residential leases) and thereby better align incentives for landlords and tenants.

BUILDING PERFORMANCE STANDARD FUND or BPS FUND means the BPS FUND established under Section 11.

CONDOMINIUM means a property that combines separate ownership of individual units with common ownership of other elements such as common areas.

COVERED PROPERTY means any of the following with at least [25,000] square feet of GROSS FLOOR AREA:

- a. A single building;
- b. One or more buildings held in the condominium form of ownership, and governed by a single board of managers; or
- c. Two or more buildings that are served by the same electric or gas meter or are served by the same heating or cooling system(s), which is not a DISTRICT ENERGY SYSTEM.

Exception: Buildings, spaces, or groups of buildings and spaces, that are sub-metered or otherwise subject to easy determination of the resource consumption attributable to each individual building, space, or group of buildings or spaces, shall be treated as separate COVERED PROPERTIES. The DEPARTMENT, in its sole discretion, shall determine whether and which buildings and spaces are subject to this exception.

Discussion: In some cases, multiple buildings with separate energy meters share a single water meter. If your jurisdiction has such cases, then decide whether to write item c. above in your law to treat such cases as a single COVERED PROPERTY, or to leave the question for rulemaking.

Exceptions:

- a. A facility in which the majority of energy is consumed for manufacturing, for the generation of electric power or district thermal energy to be consumed off site, for communications infrastructure, or for other process loads. Process loads are

energy consumed for purposes other than heating, cooling, ventilation, domestic hot water, cooking, lighting, appliances, office equipment, data centers, or other plug loads.

- b. The property is owned by the federal government.
- c. Other PROPERTY TYPES that do not meet the purpose of this law as determined by the DEPARTMENT.

Discussion: As defined here, the term “COVERED PROPERTY” may refer to either a single building or a collection of buildings, depending on the situation. To consistently maintain this perspective, the term “COVERED PROPERTY” is used throughout this law rather than “building.”

DEPARTMENT means the agency or department overseeing administration of this law.

DISTRICT ENERGY SYSTEM means a system serving multiple COVERED PROPERTIES and consisting of thermal energy generation, transfer, and distribution equipment providing thermal energy in the form of heat and/or heat rejection.

FRONTLINE COMMUNITIES means those that experience the most immediate and worst impacts of climate change, and are most often communities of color, indigenous, and low-income.

Discussion: Where possible use a definition that has already been established in your jurisdiction or work with community members and local equity and racial justice experts to find an appropriate definition for your community.

ENERGY AND WATER BENCHMARKING TOOL means the ENERGY STAR Portfolio Manager web-based tool developed by the United States Environmental Protection Agency, or any alternative system or tool approved by the DEPARTMENT, that rates the performance of a qualifying building in relation to similar buildings and accounts for the impacts of year-to-year weather variations, building size, location, and several operating characteristics.

EXECUTIVE means the elected leader of [jurisdiction].

Discussion: Instead of “Executive,” most jurisdictions should use the appropriate title such as “Mayor” or “Governor.”

FINAL PERFORMANCE STANDARD(S) means the numeric value of a PERFORMANCE METRIC, which COVERED PROPERTIES shall achieve by [date].

GROSS FLOOR AREA means the total area of a COVERED PROPERTY, measured between the outside surface of the exterior walls of the COVERED PROPERTY’s building(s). The DEPARTMENT shall publish guidance governing the calculation of GROSS FLOOR AREA, including areas that shall be excluded from the calculation.

Discussion: This definition of GROSS FLOOR AREA is consistent with the way the term is defined in ENERGY STAR Portfolio Manager.

INTERIM PERFORMANCE STANDARD(S) means the numeric value of a PERFORMANCE METRIC, which COVERED PROPERTIES shall achieve by a fixed date every [five] years from [the effective date of this law].

OWNER means any of the following:

- a. an individual or entity possessing title to a COVERED PROPERTY;
- b. the board of the owners' association, in the case of a CONDOMINIUM;
- c. the master association, in the case of a CONDOMINIUM, where the powers of an owners' association are exercised by or delegated to a master association;
- d. the board of directors, in the case of a cooperative apartment corporation; or
- e. an agent authorized to act on behalf of any of the above.

Discussion: All potential use cases are included under this definition, so that the term OWNER can be used generically throughout the remainder of this law without having to call out special cases. Jurisdictions should consider looking for and referencing an appropriate definition of OWNER that already exists in the jurisdiction's laws.

PERFORMANCE METRIC(S) means each of the objectively verifiable numeric measures of building performance regulated by this law as laid out in Section 5.

PROPERTY TYPE(S) means a category of COVERED PROPERTIES subject to the same INTERIM and FINAL PERFORMANCE STANDARDS, as defined by the DEPARTMENT. COVERED PROPERTIES within each PROPERTY TYPE shall have shared characteristics that facilitate the implementation and enforcement of this law. The DEPARTMENT may define one or more PROPERTY TYPES to be identical to ENERGY STAR property types.

Sec.2. Office of Building Performance

2.1 The Office of Building Performance is hereby established within the DEPARTMENT. The mission of this office will be to oversee the implementation, compliance and enforcement of this law, building performance standards, building benchmarking, and any future laws related to building performance improvement. [x] full-time positions are hereby created to staff the office. The office's budget for fiscal year [year] shall be [\$].

Discussion: It is critical to the success of this law that the Department have adequate staff and resources to implement. See IMT's "[Putting Policy in Action: Building Performance Standard Implementation Guide](#)" Appendix B for examples of budgets and staffing that three jurisdictions have devoted to their BPS.

Sec.3. Community Accountability Board

3.1 No later than [date], [EXECUTIVE] shall nominate the members of a COMMUNITY ACCOUNTABILITY BOARD (CAB), who shall each take office upon confirmation by a majority of the Legislature. In the event one or more nominees are neither confirmed nor refused confirmation within [60] days of the submission of the nomination, then they shall take office; provided, that if such [60]-day period ends during a recess of the Legislature, then the period shall be extended until the sixth day following the day on which the Legislature reconvenes. The CAB shall be comprised of [x] representatives of FRONTLINE COMMUNITIES and experts in areas related to racial and social equity. At least [x] number of members of the CAB shall be residents of [jurisdiction].

3.2 The CAB's responsibilities include but are not limited to:

- Advise on the selection of members of the BUILDING PERFORMANCE IMPROVEMENT BOARD (BPIB).
- Advise on writing of rules to implement this law and complementary programs and policies.
- Recommend metrics and data to track impact on FRONTLINE COMMUNITIES and seek to ensure that all government agencies involved do not infringe upon the rights of FRONTLINE COMMUNITIES.
- Develop a plan to allocate the BPS FUND public investments to improve the performance of COVERED BUILDINGS and ensure that those investments benefit FRONTLINE COMMUNITIES.
- Host, in partnership with the BPIB and the DEPARTMENT, Community Accountability Meetings to gather input regarding the design and implementation of the performance standards and complementary programs. CAB and the DEPARTMENT shall conduct broad outreach to communities of color, low-income populations, and other representatives of FRONTLINE COMMUNITIES to solicit participation in meetings.
- Review rules proposed by the DEPARTMENT to implement this law to assure that they will benefit FRONTLINE COMMUNITIES.
- Other responsibilities that the CAB deems important to its mission.

3.3 [\$] shall be budgeted annually to the CAB to commission research and hire experts to advise and assist in the implementation of this law.

Sec.4. Building Performance Improvement Board

4.1 No later than [date], EXECUTIVE shall consider CAB recommendations and nominate the members of the BPIB, who shall each take office upon confirmation by a majority of the Legislature. In the event one or more nominees are neither confirmed nor refused confirmation within [60] days of the submission of the nomination, then they shall take office; provided, that if such [60]-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes.

4.2 The BPIB's responsibilities include, but are not limited to:

- In consultation with the CAB, design and recommend to the DEPARTMENT, rules and mechanisms for holding agencies accountable for progress against the goals of this law.
- Advise the DEPARTMENT on implementation of this law.
- Recommend PERFORMANCE METRICS and FINAL PERFORMANCE STANDARDS for each PROPERTY TYPE to the DEPARTMENT.
- As requested by the DEPARTMENT, review submitted Building Performance Action Plans (BPAPs) and make recommendations for changes, approval or denial by the DEPARTMENT.
- Review BPAPs upon an appeal by the OWNER of a COVERED PROPERTY whose BPAP application has been rejected by the DEPARTMENT. The BPIB may approve BPAP applications rejected by the DEPARTMENT, and in such cases, the BPIB's decision shall be binding upon the DEPARTMENT.
- Recommend procedures for exemptions, extensions, and adjustments pursuant to Section 9.

Discussion: The intention is that this law will use the BPIB as the sole venue for appeal and will reference and utilize the jurisdiction's pre-existing standard appeal process rules. If the jurisdiction's laws prevent the BPIB from serving as the sole venue for appeal, then the BPIB should not serve an appellate role.

4.3 The BPIB shall broadly represent affected stakeholders. The BPIB shall consist of [X] members appointed by the [EXECUTIVE] in their sole discretion.

4.4 At least [X] members of the BPIB shall be residents of [jurisdiction]. The BPIB shall be comprised of representatives, or their designees, from the following entities and professions:

- The Director of the DEPARTMENT
- Local utility
- Provider of energy efficiency, building resilience or renewable energy services or consulting
- Affordable housing OWNER or operator
- Affordable housing tenant
- Labor union representing workers who operate or service COVERED BUILDINGS
- Technical building design professional
- Engineer
- Facility operations professional
- Nonprofit dedicated to climate action, resiliency, public health, green building, economic development, or building decarbonization
- Nonprofit dedicated to racial equity or environmental justice
- Multifamily building OWNER or operator
- Nonresidential building OWNER or operator

4.5 DEPARTMENT staff shall support the BPIB.

4.6 [§] shall be budgeted annually to the BPIB to commission research and hire experts to advise and assist on the implementation of this law.

4.7 Community Accountability Meetings held in-person will be scheduled in central locations with food and childcare provided, as needed. Virtual meetings will be scheduled in a way that supports the ability of members to participate.

Discussion: Community Accountability Meetings should take place at an appropriate time to allow for as many members of the community to attend as possible, regardless of whether the meeting is held in-person, virtually, or in a hybrid setting. If the meeting is held virtually or in a hybrid format, there should be options to attend via audio only. Meetings should be logged and a recording made publicly available, to allow community members who could not attend a chance to review discussions.

Sec.5. Performance Metrics, Final Performance Standards and Interim Standards:

5.1 No later than [date], [DEPARTMENT], in consultation with the CAB and BPIB, shall select PERFORMANCE METRICS and set a FINAL PERFORMANCE STANDARD for each PROPERTY TYPE for each of the relevant PERFORMANCE METRICS.

5.2 The DEPARTMENT shall set FINAL PERFORMANCE STANDARDS that shall collectively cause the aggregate attributable to all COVERED BUILDINGS to be reduced by at least the following percentages by [2045]:

- Site energy usage - [x%]
- Onsite and district thermal greenhouse gas emissions - [x%]
- Water usage – [x%]
- Coincident peak electric demand – [x%]

Discussion: Many jurisdictions will choose not to include some of the above performance metrics in their BPS. In deciding which and how many metrics to use, each jurisdiction will have to balance the benefits of including a metric against its costs and additional complexity. Another consideration is the value of having a single law that includes a comprehensive and holistic solution for buildings versus a more piecemeal approach requiring the passage of multiple laws over time.

5.3 The DEPARTMENT shall set a FINAL PERFORMANCE STANDARD for ventilation.

5.4 The DEPARTMENT may set more demanding interim and FINAL PERFORMANCE STANDARDS for COVERED PROPERTIES, which receive their first construction permit after [date].

5.5 Unless otherwise directed by the DEPARTMENT, the FINAL PERFORMANCE STANDARDS for any COVERED PROPERTY containing multiple PROPERTY TYPES shall be calculated on a pro rata basis based on the square footage of each PROPERTY TYPE within the COVERED PROPERTY.

5.6 As of [date] and at the end of every [60-month] period thereafter, each COVERED PROPERTY shall demonstrate progress toward each applicable FINAL PERFORMANCE STANDARD by achieving the INTERIM PERFORMANCE STANDARD(s) set by the DEPARTMENT for the COVERED PROPERTY.

5.7 The DEPARTMENT shall calculate each INTERIM PERFORMANCE STANDARD for each COVERED PROPERTY using a straight-line trajectory, from the COVERED

PROPERTY's baseline performance for each PERFORMANCE METRIC to the FINAL PERFORMANCE STANDARD for that PERFORMANCE METRIC such that each calculated PERFORMANCE METRIC shall improve in equal increments during each [60-month] period.

- 5.8 Exception: The DEPARTMENT may use other means to calculate INTERIM PERFORMANCE STANDARD for ventilation and for other PERFORMANCE METRIC(s) for which it deems the straight-line trajectory approach ill suited.

Sec. 6. Rulemaking:

- 6.1 In consultation with CAB and BPIB, the DEPARTMENT shall propose initial rules for a public comment period of no less than [60] days. The CAB and BPIB may also submit comments during the public comment period.
- 6.2 The DEPARTMENT shall convey all comments to the CAB and the BPIB within [three days] of the closing of the comment period.
- 6.3 The CAB and BPIB may vote to disapprove proposed rules. If two thirds of the members of the CAB or of the BPIB vote to disapprove, then the rules shall not take effect and the DEPARTMENT shall prepare revised rules in consultation with the CAB and BPIB. [30 days] following delivery of all comments to the CAB and BPIB, if there has been no such vote of disapproval, then the DEPARTMENT may deem the rules final and effective.
- 6.4 The same process shall apply to revisions of the rules, except that the DEPARTMENT may shorten the comment period.

Sec.7. Board Rules:

- 7.1 All initial appointments to the COMMUNITY ACCOUNTABILITY BOARD and BUILDING PERFORMANCE IMPROVEMENT BOARD shall be for a term of [X] years.
- 7.2 Members whose appointed terms have expired shall be permitted to continue to serve until reappointed or replaced by a new appointee.
- 7.3 The DEPARTMENT shall fairly compensate CAB and BPIB members and provide stipends to cover the cost of childcare and information technology needs as determined by the CAB.
- 7.4 Equitable engagement is important for these groups. Meetings shall take place at collectively agreed times, dates and physical or virtual locations, with appropriate amenities provided, including meals.

Sec.8. Building Performance Action Plans:

- 8.1 If, due to unusual circumstances, an OWNER believes that a COVERED PROPERTY cannot reasonably meet one or more of the applicable interim or FINAL PERFORMANCE STANDARDS, then the OWNER may propose a Building Performance Action Plan (BPAP) to the DEPARTMENT.
- 8.2 The DEPARTMENT shall establish rules and deadlines governing BPAPs, including whether the DEPARTMENT shall publish some or all BPAPs.
- 8.3 If the DEPARTMENT approves a BPAP for a COVERED PROPERTY, then the COVERED PROPERTY shall be in compliance with this law so long as the terms of the BPAP are fulfilled on a timely basis.

8.4 The BPAP constitutes a binding agreement between the OWNER of the COVERED PROPERTY and the DEPARTMENT.

Sec.9. Extensions, Adjustments and Exemptions:

9.1 The DEPARTMENT may grant an extension, adjustment or exemption to one or more INTERIM or FINAL PERFORMANCE STANDARDS for a COVERED PROPERTY whose OWNER submits a request, together with documentation, in a form prescribed by the DEPARTMENT, at least [x days] prior to any submission deadline, if the COVERED PROPERTY meets any of the following criteria:

- A demolition permit was issued or demolition is planned that will prevent achievement of the next INTERIM PERFORMANCE STANDARD;
- The covered building did not have a certificate of occupancy or temporary certificate of occupancy for all twelve months of the baseline year prior to the INTERIM PERFORMANCE STANDARD compliance schedule;
- The COVERED PROPERTY is in financial hardship, as defined by rules written by the DEPARTMENT in consultation with the CAB and BPIB;
- The DEPARTMENT determines that strict compliance with provisions of this law would cause financial hardship or would not be in the public interest.

Sec.10. Technical and Financial Assistance to Building Owners:

10.1 In consultation with the CAB, the [EXECUTIVE] shall convene a deep renovation task force charged with creating a combined funding and technical assistance package for OWNERS lacking the financial, operational, or technical capacity to meet INTERIM or FINAL PERFORMANCE STANDARDS.

Sec.11. Violations and Enforcement:

11.1 An OWNER whose COVERED PROPERTY fails to perform to the level of an INTERIM or FINAL PERFORMANCE STANDARD by the applicable compliance date, as described in Section 5, shall be required to make an ALTERNATIVE COMPLIANCE PAYMENT (ACP).

11.2 Each year, for each PERFORMANCE METRIC for each COVERED PROPERTY, the ACP shall not exceed [0.5% of the assessed value] of the COVERED PROPERTY.

Exception: For each unit of each of the below PERFORMANCE METRICS in excess of an INTERIM or FINAL PERFORMANCE STANDARD, except as permitted under Section 8 or Section 9, ACPs shall be set within the following ranges:

- [\$a - \$v] per kBtu of site energy usage
- [\$b - \$w] per metric ton of CO₂e of onsite and district thermal greenhouse gas
- [\$c - \$x] per thousand gallons of water usage
- [\$d - \$y] per kW of coincident peak electric demand
- [\$e - \$z] per part of carbon dioxide per million parts of indoor air

Discussion: The above minimum ACPs are particularly needed for jurisdictions that contain certain properties that are assessed at levels much lower than their true value. Most jurisdictions contain such properties, which are most often owned by tax-exempt entities.

Performance metrics referenced in the first four bullets above will intrinsically scale with the size of the building, but the ventilation metric will not. Therefore, the range of ventilation ACPs will need to be much broader than the ranges for the other ACPs.

ACPs should be scaled to ensure that it will be economically preferable to the preponderance of OWNERS to achieve all standards instead of paying ACPs.

11.3 In its sole discretion, the DEPARTMENT shall write rules to determine required ACPs for COVERED PROPERTIES; however, ACPs shall proportionally reflect:

- The total number of INTERIM and FINAL PERFORMANCE STANDARDS which a COVERED PROPERTY has failed to achieve.
- The assessed value of the COVERED PROPERTY.
- The magnitude of non-compliance under each PERFORMANCE METRIC.

11.4 There is established as a non-lapsing fund the BPS FUND, which shall be used solely for the purposes stated in this law.

11.5 All funds collected from payment of ACPs shall be deposited into the BPS FUND.

11.6 All funds deposited into the BPS FUND, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this law without regard to fiscal year limitation.

11.7 Additional funds from other sources may also be deposited into the BPS FUND.

11.8 In accordance with the plan developed by the CAB, at least [x%] of ACPs collected under this law shall be used to support performance improvements to privately-owned properties within [jurisdiction]; of that amount, the DEPARTMENT shall spend at least [x%] to improve the regulated performance of COVERED PROPERTIES serving FRONTLINE COMMUNITIES. The remainder shall be allocated to improve the performance of public properties within [jurisdiction] or to support [jurisdiction's] administration of this law and related educational activities.

Discussion: With respect to the language in this provision addressing FRONTLINE COMMUNITIES, the intent is to ease the burden of compliance for properties such as affordable multifamily buildings located in areas with a concentration of low-income, or minority residents or that have experienced a historical lack of public and private investment.