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California Energy Commissionâ€™s Draft California Building Energy Performance Strategy Report, SB 48 Implementation Report

Please see attached.

Additional submitted attachment is included below.

SAJE's Feedback on the California Energy Commission's California Building Energy Performance Strategy Report

By Francisco Arvizu, Kyle Nelson, and Karen Ramirez

1. Terminology and Re-Centering Tenancy

First, we want to note that the report would benefit from consistency in terminology. When referring to residential and commercial tenancy, tenant rights, or the equity impacts of building performance standards (BPS), we notice that the report slips between using the word "landlord" and describing landlords instead as "building owners" and "housing providers." These and other terms obfuscate a fundamental dynamic in the report: BPS may have negative consequences for residential and commercial tenants because of *how landlords pass adaptation and compliance costs through to tenants*. Any potential negative consequence of decarbonization in response to BPS for tenants identified in the report occurs through the actions of landlords. By clearly and consistently elaborating this relationship throughout, the report can help legislators, regulators, and advocates focus on the real causes of BPS equity impacts.

Second, the report centers ownership in its policy analysis at the expense of analyzing the real limitations to using policy and existing enforcement agencies to protect tenants from displacement vulnerability. For example, in California there are very real constraints on expanding tenant protections, particularly controls on rent increases, for residential tenants (through the *Costa Hawkins Act Rental Housing Act of 1995)* and commercial tenants (through the *Costa-Keene-Seymour Commercial Property Investment Act of 1987*). In considering the equity impacts of enforcement for BPS noncompliance, for example, the report names that "building owners" (landlords) may "try to pass those costs onto tenants by increasing rent." But the CEC and other enforcement agencies mentioned in the report have no authority to intervene in landlord-tenant relations, especially those related to rent increases. The resulting policy recommendation elides the problem that the CEC and other enforcement agencies mentioned in the report, cannot stop landlords from passing adaptation, compliance, and punitive costs to tenants through rent increases. To reframe, the CEC might ask "how can the state subsidize landlords' costs in ways that make pass-throughs to tenants unnecessary in the first place?"

In the case of commercial tenancy, it is illegal for the state or local jurisdictions to impose any sort of price controls on commercial landlords. We encourage the CEC to amend its report to take these practical barriers into account because the report has little insight into how energy and environmental policy levers could be pulled to tenants' affordability concerns. Furthermore, how might these levers connect to tenant rights enforcement at the state and local level (e.g., how could a BPS include infrastructure for inter-agency collaboration in enforcing tenant rights)? Finally, and a key policy development and implementation question: how would the state fund enforcement given how inadequately funded enforcement agencies already are for the energy and tenant rights enforcement? These connections do not currently exist and these questions have yet to be answered, but the CEC report could propose what one might look like and how it might be implemented in this current policy atmosphere.

2. **Section-Specific Feedback**

In "**Application of Evaluation to Equity Outcomes"** (p. 36), the report states that "construction-as-harassment (rate of situations where landlords conduct illegal, invasive, and dangerous construction to make living conditions so unbearable and harmful to health that tenants feel pressured to leave)." In addition to unsafe or disruptive construction, harassment of commercial tenants can also take other forms, such as intimidation, verbal abuse, misinformation, and psychological pressure. These tactics can be used to push tenants out even when they have the right to stay. Policies should recognize and address these forms of harassment as part of the broader pattern of displacement pressures facing commercial tenants. We recommend adopting the definition of harassment from the City of Los Angeles's Tenant Anti-Harassment Ordinance (LAMC §§ 45.30-45.36).

Later in the section, the report states that "If the state wishes to quantify energy burden or displacement rates of low-income and small commercial tenants, then those outcomes would need to be measured." We agree with this point. In addition to tracking eviction rates within upgraded buildings, it is also important to track what's happening in the surrounding areas. Energy efficiency upgrades can increase property values, which often leads to higher rents and rising costs nearby. This can push out small businesses even if their building isn't being upgraded. Tracking these broader trends, or spillover effects, would help better understand and prevent indirect displacement impacts. It may also help to create a commercial rent registry policy. This could require landlords to register their properties, pay a yearly license, and report which units are rented or vacant. Landlords could also be required to explain why units stay vacant for long periods of time. Having this kind of data would improve transparency and help policymakers better track displacement risks and market conditions.

In **"Commercial Tenant in a Building Subject to BPS"** (pp. 54-55), "building owners may choose to lease their buildings or spaces within their buildings to tenants for commercial or retail uses. Commercial tenants may have some or total control over building energy use and, therefore, control whether a building meets the performance standards established by a BPS. For example, commercial tenants may have limited control over heating, ventilation, and air-conditioning and lighting systems but may have total control over appliances such as computers, stoves, and refrigerators." In response to this claim and example, we encourage the CEC to consider that while commercial tenants contribute to building energy use, policies must explicitly recognize that tenants often have limited or no control over critical building systems such as heating, ventilation, and air conditioning, and lighting. Any framework that allows penalties to be passed through to tenants is inequitable and risks placing an undue financial burden on small businesses, many of which are already vulnerable to rising costs and displacement pressures.

SAJE believes that any BPS must include strong commercial tenant protections and explicitly prohibit *any* pass-through of fines or penalties accrued by commercial landlords to tenants. Policies should instead place clear responsibility on landlords to meet BPS by investing in necessary upgrades and improvements. Without these protections, BPS policies risk accelerating commercial displacement, particularly in low-income communities and communities of color, where there are limited protections against no-fault evictions or excessive rent increases for commercial tenants. To be effective *and* equitable, BPS policies must center accountability for building owners, protect commercial tenants from financial harm, and prevent unintended consequences such as non-fault evictions and displacement.

Finally, leases for commercial and residential leases are very different; commercial leases lack the standardization of residential leases. As a result, many leases drafted by commercial landlords are not favorable to tenants and lack consistent terms. Additionally, commercial tenants often don't have written leases and therefore the tenant does not know their rights. Commercial tenants not having lease agreements in writing make it difficult for them to know and exercise their tenant rights. SB 1103 took an important step forward to change this situation, but we encourage the CEC to highlight the discussion of green and performance-based leases in its policy recommendations.

In **"Strategies to Avoid Evictions, Harassment, and Displacement of Small Commercial Tenants"** (pp. G9 - G13), the report states that "Small commercial tenant representatives recommend a right-to-return policy that allows a commercial tenant to have first rights to rent a property they were evicted from due to repairs or development." While a right-to-return policy for commercial tenants is important, it may be difficult to make it truly work without strong relocation assistance support. For small businesses, temporarily moving is often much more expensive and complicated than for residential tenants—especially for those with large equipment or significant inventory. Relocation costs can easily reach tens of thousands of dollars, which can put a small business at risk of closing permanently. Additionally, building upgrades to meet BPS requirements can take a long time, making it hard for businesses to pause operations and realistically return later. Without guaranteed and adequate relocation assistance, a right-to-return policy alone may not be enough to protect small commercial tenants or ensure they can actually come back.

On p. G10, the report states that "just-cause eviction protections are another strategy to protect commercial tenants." The problem is that this is not currently an option in California due to the *Costa-Keene-Seymour Commercial Property Investment Act of 1987* and, as advocates have found in attempts to repeal the similar *Costa Hawkins Act Rental Housing Act of 1995*, it is unlikely that this prohibition will be repealed anytime soon. In lieu of just cause eviction protections, how does the CEC propose to use the existing enforcement apparatus to protect commercial tenants from eviction due to BPS-related rent hikes? To make any tenant protection meaningful, recommendations should include access to free legal services and representation for commercial tenants—funded by the state or required of landlords in certain cases. Without legal support, many small business owners may not have the resources to defend their rights, making just-cause protections difficult to enforce in reality.

On p. G11, the report cites the SJV pilot and EDB program, "which limit rent increases for a certain number of years after an agreement is signed between the program and the property owner." Protecting commercial tenants from rent increases related to retrofit costs is the right approach, but putting a time limit on these protections could still leave commercial tenants vulnerable once the protection expires. We strongly believe that protections related to BPS-related retrofit costs should remain in place as long as the tenant remains in the building, rather than ending after a set number of years. This would provide greater stability for small businesses and create more confidence that climate-resilient upgrades will not become a reason for landlords to significantly increase rents.

On p. G12, the report states that "some tenants, especially nonnative English speakers, may not be aware of existing tenant protections. Energy programs can educate tenants and help hold landlords accountable by providing information in multiple languages that outline project information, tenant rights, and landlord responsibilities." In our experience, however, we have noticed that there have been many cases where government agencies or property owners are expected to share information with tenants, but that outreach does not always happen or reach the people who need it most. Because of this, we recommend that community-based organizations (CBOs) be contracted to lead outreach and education around BPS and related tenant rights. CBOs are better positioned to conduct in-person engagement, provide information in multiple languages, and build trust, especially with small commercial tenants. They can also create space for tenants to share their needs and concerns throughout the process. Commercial tenants should be involved in the planning, implementation, and post-project stages—not simply informed after decisions have already been made.