S.6843-B (Kavanagh) / A.8431-A (Gallagher)

STAFF CONTACT : Ken Pokalsky | Vice President | 518-694-4460

BILL
S.6843-B (Kavanagh) / A.8431-A (Gallagher)
SUBJECT
All Electric Building Act
DATE
March 04, 2022
OPPOSE

We recognize that, driven by the emission reduction mandates adopted in the "Climate Leadership and Community Protection Act," or CLCPA, New York State is committed to increased electrification of its buildings and transportation sectors.

This transition will be a massive and costly undertaking, with significant changes required in both sectors, as well as major investments in expanded electric power generation, transmission systems and local energy distribution networks.

To address the complexity of CLCPA implementation, that law put in place a comprehensive planning process, to make recommendations for both sector-specific initiatives and the integration of necessary measures in various business sectors, including the need for additional renewable power generation and expansion of the electric transition and distribution system needed to support expanded electric demand and usage. The CLCPA draft scoping plan was issued in late December 2021 and is subject to a public review and comment period that extends to at least April 30, 2022, with approval of a final plan by the end of calendar 2022.

At this point, we see little benefit to be gained by having the state legislature dismiss the planning process it approved in the CLCPA, and moving to adopt specific legislative measures, out of context, as is proposed with this legislation.

While this legislation mandates "all electric" buildings (with limited exceptions) by 2024, the legislature is also considering other measures necessary to support this transition without imposing significant costs or discoursing future investments from being made in New York. These include but are not limited to S.642-A (Sanders), which provides a sales tax exemption for residential and commercial geothermal heat pump systems equipment and S.3864 (Kennedy), which provides an investment credit under the personal income tax for expenditures on geothermal heat pumps.

Other measures may be necessary, especially for multi-family housing, major commercial projects and for industrial projects, all of which would be covered by this electric building mandate. We believe it would be bad policy to put a mandate in place without a comprehensive plan for its implementation. These and other recommendations will be made as part of the scoping plan review process. We believe legislative action should be guided by that process.

We have several specific concerns regarding this legislation as well:

- While the bill provides for modifications in building permits based on physical or technical infeasibility, it allows for limited factors to be considered in determining infeasibility. One factor that seems to be ignored by this legislation, and that is beyond the control of a building developer, is the availability of adequate local electric power infrastructure to accommodate an all-electric building. In particular, this is a concern for large commercial, industrial or institutional buildings, all of which would be covered by this mandate. We believe the factors for an infeasibility determination to be expanded to address electric power infrastructure considerations.
- In several places, the bill specifies that “financial considerations” are not a sufficient basis to determine infeasibility, and the sponsor’s memo in support states that its fiscal implications will be “minimal” – a conclusion limited to the bill's potential impact on the state budget. Even so, other provisions of the bill recognize the potential cost impacts of this mandate by directing state agencies to make recommendations for measures necessary to avoid any diminished production of affordable housing or the imposition of electricity costs that exceed six percent of residential customer’s income. We are concerned that the legislature seems to recognize such a limited concern for the cost impacts of this electric building mandate. We expect that the capital and/or operating cost impact of this mandate will discourage industrial and commercial investments in the state – impacts that could be avoided providing an expanded consideration of infeasibility to include economic infeasibility.
- The bill provides that in instances where a modification from the “all-electric” mandate is approved by a municipal-issued building permit, the installation of natural gas or oil piping systems or infrastructure is strictly limited to the systems or areas of the building where the all-electric

mandate is determined infeasible. This language seems inconsistent with the fact that the bill does not prohibit the use of natural gas for commercial and industrial processes contained in the building. Any final legislation should be amended accordingly.

- Likewise, we believe the bill's language may unintentionally apply to significant industrial and commercial activity related to water heating. The CLCPA scoping plan's proposals for the industrial sector recognizes "the heterogenous nature of industry, and the resulting need for customized solutions on an industry-specific and even factory-specific basis." We do not believe industrial processes should be subject to generally applicable mandates or restrictions as proposed in this legislation. The bill's definition of "building energy needs" applies to "all . . . water heating including pools and spas," a broad definition that could capture a wide range of industrial processes. We believe that this definition should be limited to non-process water heating.

We recognize that New York is committed to significantly greater electrification of its building and transportation sectors. While this transition may be more a matter of when and how, that if, the manner and timing of the transition will significantly affect its impacts on New York residents and businesses. We believe any CLCPA implementation legislation needs to be mindful of the need to avoid adverse impacts on investment and growth, and the potential for "leakage" of economic activity and emissions that can result in increased global greenhouse gas emissions.

For these reasons, The Business Council opposes adoption of S.6843-B (Kavanagh)/A.8431-A (Gallagher).