



S.9405 (Parker) / A.10439 (Rules/Fahy)

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BILL S.9405 (Parker) / A.10439 (Rules/Fahy)
SUBJECT Appliance and Equipment Energy Efficiency Standards
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OPPOSE

While we can support many elements of this legislation, which makes numerous updates to the state energy code, we have concerns regarding the bill's proposed scope of regulatory authority and strongly recommend additional amendments as discussed below.

The bill provides, in its amendments regarding appliance and equipment efficiency standards, to amend Energy Law §16-606.1(b) to authorize NYSERDA, in consultation with the Secretary of State, to "adopt regulations establishing efficiency standards for products not specifically listed" in §16-104 (including the expanded list proposed in this bill).

We have two concerns regarding this provision. First, as a policy matter, it provides excessively broad delegation of regulatory authority to allow NYSERDA to apply standards to virtually any category of product used in buildings. We believe this regulatory authority should be limited to product categories specifically designated by the legislature, as is being proposed elsewhere in A.8143-A).

Second, and more important, this broad delegation of regulatory authority could be interpreted as extending to products that constitute industrial and commercial processes. We do not believe industrial processes should be subject to generally applicable energy efficiency standards adopted through the state's building code process. The Climate Action Council's 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."

However, neither current Article 16 nor this legislation include a definition of the term "product" or "products." The nearest that the Energy Law comes to doing so is in its provisions regarding the state construction code, in Article 11, which is applicable to the construction of new buildings and the addition to and alteration of any existing building or building system. Article 11 defines "building" as "Any structure used or intended for supporting or sheltering any

use or occupancy . . . including any equipment therein,” and in its definition of “equipment,” it explicitly excludes “any items constituting an industrial or commercial process.”

We strongly recommend that, if the legislature grants the broad regulatory authorization proposed in these amendments to §16-606.1(b), it should provide a limit on the scope of NYSERDA’s regulatory authority by defining “product” as excluding “any items constituting an industrial or commercial process.”

Authority to set standards for specific components of industrial or commercial processes, i.e., specific categories of standardized equipment, could be added by specific legislative grants of authority.

We appreciate the legislature’s consideration of these concerns, and we welcome the opportunity to discuss these comments and recommendations.

We also have concerns regarding the new enforcement provisions included in proposed amendments to §16-107, which requires entities that sell or install products for which efficiency standards have been adopted to provide to the state any requested information regarding the entity’s “business practices, or business methods, or proposed business practices or methods.” This language is excessively broad, as the proposed enforcement provisions only apply to compliance with state or federal product efficiency standards. This information demand authority should be limited to information regarding such compliance.

Also, proposed amendments to §16-606 regarding the authority of the secretary of state’s imposition of civil penalties would direct any penalties collected under this provision to be deposited into the consumer protection account established under §97-www of the State Finance Law. Under current state law, funds in that account are exclusively available to the department of state for consumer protection related activities. We have long argued against having civil penalty revenues dedicated to the support of the enforcement agency’s budget, as it could provide an improper influence on determination of proper penalties. Penalty calculation should be based on the severity of a violation and its impact, not the need for agency funding. Penalty income should go to the state General Fund.

We recognize that there will be many components to the state’s greenhouse gas emission reduction and energy efficiency efforts. This proposed legislation addresses several elements of those efforts and raises significant public policy issues.

We urge the legislature to include address these concerns and recommendations in acting on this proposed legislation, and we welcome the opportunity to discuss these comments and recommendations.