

S.563-A (Kavanagh)

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BILL S.563-A (Kavanagh)
SUBJECT All Electric Building Act
DATE January 23, 2023
OPPOSE

Significant reductions in greenhouse gas emissions from the buildings sector are necessary to meet the aggressive statewide greenhouse gas target set forth in the Climate Leadership and Community Protection Act (CLCPA). How, and how fast, the state moves toward implementation of the CLCPA's mandates will determine how successful or disruptive the transition will be.

While decarbonization of the buildings sector (and transportation sector) will continue to move forward, we are very concerned the state's economy and the state's energy systems are not prepared to accommodate a significant, rapid transition from natural gas and petroleum usage, and that any transition mandate reflect and include provisions to offset potential impact on private sector investments and jobs, and significant adverse impact on New York residents.

We share many concerns raised by developers and others regarding broad bans on fossil fuel use in new construction. However, for purposes of commenting on S.563-A, we want to focus on specific provisions of this legislation, and provide several recommended amendments based on specific, practical concerns.

Timetable – This legislation would require fossil fuel prohibitions in buildings less than seven stories by December 31, 2023 and for other buildings by July 1, 2027. This legislation is inconsistent with the Climate Action Council's Final Scoping Plan recommendation in several respects. We would recommend that any the timetable of any such mandate reflect the Final Scoping Plan, which proposed:

- by 2025, adopt prohibitions on the combustion of fossil fuels in new construction of single family and low-rise (three stories or less) residential buildings that are "subject to residential codes and standards."

- by 2028, adopt similar prohibitions for multifamily residential buildings of four stories or more and commercial buildings.

The Final Scoping Plan's timetables are also reflected in Governor Hochul's 2022 State of the State message. Importantly, the Final Scoping Plan's initial compliance timetable is limited to single-family and low-rise residential buildings, with new commercial, industrial, governmental and institutional buildings subject to the 2028 compliance date.

Scope of Regulation under S.562-A – Specific provisions in this bill regarding certain categories of buildings raises concerns about the intended scope of this legislation. The bill provides an authorization for limited exemptions for buildings to be used for “commercial food establishments, laboratory, laundromat, hospital, or crematorium” a list seemingly based on a list of exempted activities under New York City's Local Law 154. This bill should be clear as to what activities would be subject to any such exempted, i.e., energy used for “buildings” and “equipment,” as defined in law. Based on these definitions, industrial and commercial process equipment is already exempt from the state energy code statute, and should be exempt from the provisions of S.562-A (Article 11 defines “buildings” as “Any structure used or intended for supporting or sheltering any use or occupancy or for affording shelter to persons, animals or property, including any equipment therein (italics added, see §11-102.4) but also defines “equipment” as “Plumbing, heating, electrical, lighting, insulating, ventilating, air conditioning, and refrigerating equipment, elevators, escalators, and other mechanical additions or installations but does not include any items constituting an industrial or commercial process” (italics added, see § 11-102.8). Likewise, as the code does not apply to industrial and commercial process energy use, any ban on energy infrastructure included in a final bill should also explicitly exempt from its restrictions any energy infrastructure necessary for industrial and commercial processes, or for any other exempted use. This legislation as currently drafted only exempts energy infrastructure necessary for use where a prohibition on the use of fossil fuels is found to be infeasible.

Basis for Exemptions - The bill's proposed § 11-104.8 provides that the state building code council may, but is not required to, adopt an exemption from its ban on fossil fuels for buildings and equipment related to certain activities, including backup power systems, and buildings specifically designed for use by a commercial food establishments, laboratory, laundromat, hospital, or crematorium. However, the bill goes on to provide that any such exemptions be limited to where a ban on the use of fossil fuel infrastructure, building systems and equipment is “infeasible,” allowing consideration of physical or technical,

but not financial, infeasibility. We believe this proposal is excessively narrow, and economic feasibility should be taken into consideration, under specific circumstances. In addition, another factor that could impact feasibility, that is beyond the control of a building developer, is the availability of adequate local electric power infrastructure to accommodate an all-electric building. This issue could be a particular 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.

Backup Power - The Final Scoping Plan recognizes that in colder areas of New York, “some homes that install cold climate ASHPs [air source heat pumps] may need supplemental heat . . . for the coldest days to maintain comfort, avoid oversized heat pumps that lead to inefficient operation, and offer a backup source of heat during a power outage (pg. 179), and further recognizes that the U.S Department of Energy and other agencies are working to accelerate the development and commercialization of next-generation cold climate ASHPs, including those optimized for -15 degree F operations. However, neither the final scoping plan nor S.562-A recognizes this continued need for fossil fuels as a backup energy source. In fact, S.562-A only allows the energy code to include fossil fuel backup power if alternatives are deemed physically or technically infeasible, and even then the bill requires that any use of fossil fuels for backup power should also be “all-electric ready” (to the fullest extent feasible.) We recommend that any final legislation clearly allow for use of fossil fuels as a backup energy source.

Local Law Pre-Emption – We recognize that New York City has already adopted statutory limitations on emissions from newly constructed buildings (see Local Law 154 of 2021), and the state legislature is reluctant to overwrite that law. However, we are always concerned with the possibility of multiple, inconsistent mandates being adopted by municipalities across New York State. Therefore, we strongly recommend that whatever state-level statute be adopted regarding building emissions, it should preempt any additional municipal mandate or prohibition on fossil fuel infrastructure, building systems or equipment.

Need for a Comprehensive Approach – The state’s clean energy transition mandated by the CLCPA will be a massive and costly undertaking, with significant changes required in virtually all economic sectors. In addition to restrictions on fossil fuel use in new building construction, the Final Scoping Plan recommends numerous additional measures necessary to support this transition, to avoid imposing significant increased costs or discouraging future investments from being made in New York. These include but are not limited to

the need to “scale up” financial incentives, including low-cost financing, for building decarbonization. Likewise, the legislature has proposed a number of incentive measures, including sales tax exemptions for residential and commercial geothermal heat pump systems equipment and investment tax credits 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 fossil fuel ban in place without a comprehensive plan for its implementation.

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.

Applicability Threshold – As a final comment, we note that this legislation, the final scoping plan, and the Governor’s state of the state address all propose to phase-in a fossil fuel ban based on the height of new buildings, rather than the square footage (as does New York City’s Local Law 154). We believe that these proposed phase-in periods reflect limitations in technology, equipment and workforce necessary to install alternative energy systems. However, we believe these proposed transitions would result in a lop-sided phase-in, especially in upstate New York, where virtually all new construction is low-rise, certainly compared to S.564-A seven-story threshold. It would make more sense to base the phase-in based on the overall size, not height, of new buildings. According to the most recent report of the U.S Energy Information Administration’s “Commercial Buildings Energy Consumption Survey,” commercial buildings of less than 5,000 square feet make up about half of all commercial buildings in the U.S., while commercial buildings of up to 50,000 square feet make up about 50 percent of all floorspace in commercial buildings. While that report cites a gradual increase in the average size of buildings, we can assume that new construction follows roughly the same pattern as identified in our existing building stock. Based on that data, a phase-in based on square footage, using a figure in the 25,000 to 50,000 square foot range, would provide for a more manageable compliance schedule.

For these reasons, The Business Council opposes adoption of S.563-A as currently drafted, and strongly recommends that any final legislation restricting fossil fuel use in new construction recognize and reflect the concerns and recommendations discussed above.