

NEW BILL PUSHES DECARBONIZATION OF THE BUILDING SECTOR ACROSS NEW YORK

Hodgson Russ Renewable Energy Alert
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With the goal of reaching aggressive emissions reductions targets established by the Climate Leadership and Community Protection Act (“CLCPA”), New York is targeting building decarbonization as a way to significantly cut carbon emissions. And focusing on buildings is an effective tactic. Roughly forty percent of global carbon emissions come from buildings—with building operations accounting for 28 percent of that figure.^[1] Thus, building electrification can be a path forward for achieving the transition away from fossil fuels and meeting aggressive climate goals.^[2]

As such, the New York State Senate (“Senate”) is currently considering the All-Electric Building Act (Senate Bill S6843A) (“Act”), which would add a new section (“Section 382-c”) on all-electric buildings to the New York State Uniform Fire Prevention and Building Code Act (N.Y. Exec. Law Art. 18) (“State Code”).^[3] Starting in 2024, Section 382-c would prohibit cities, towns, and villages from issuing construction permits for any new commercial, residential, or mixed-use building that is not “all electric.” Section 382-c defines “all-electric buildings” as buildings or projects that use a “permanent supply of electricity as the sole source of energy to meet building energy needs ... [which] shall have no natural gas, propane, or oil heaters, boilers, piping systems, fixtures or infrastructure installed to meet building energy needs.”^[4] These building energy needs include space heating and cooling, water heating, and cooking and clothes drying appliances.

Section 382-c also includes a narrow exception for new buildings that would be physically or technically infeasible to make all-electric. Such buildings can be “mixed-fuel,” using a combination of electricity and natural gas, propane, or oil to meet the building’s energy needs. To qualify for this exception, a permit applicant must demonstrate that the building either cannot satisfy the necessary building code requirements without the usage of gas or oil systems, or if the building is specifically designated for use as a commercial food service establishment, that such establishment cannot feasibly operate using commercially available all-electric appliances. But recognizing that all-electric infrastructure will add significant demand to the power grid, the Act also directs the New York State Department of Public Service (“DPS”), the New York State Energy Research and Development Authority (“NYSERDA”), and other state agencies to prepare a report identifying the necessary policy changes to accompany the Act. This report will address the

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needed changes to electric rate designs and new and existing subsidy programs to ensure the Act does not impact opportunities for affordable housing or affordable electricity for utility customers.

Hodgson Russ Takeaways

If the Act is passed into law, New York would join California as a leader in building decarbonization. The Act is similar to many passed by municipalities in California that have implemented electric-required reach codes, natural gas bans, or both.^[5] These cities are serving as nationwide and worldwide examples of successful municipal action on climate change. They have demonstrated the power of municipalities—uniquely situated as the regulators of the built environment—to lead the charge on building decarbonization. However, achievement of such a monumental goal in a municipality could hinge on the political posture of the state in which it is located regarding the issue of building decarbonization. As of this year, 19 states have passed laws prohibiting municipalities from enacting natural gas bans or electric-required energy codes.^[6] New York and California are certainly not among them.

One interesting aspect of the law is whether or not it makes clear that replacement of natural gas with green hydrogen is permitted. The marketplace for hydrogen-able equipment, both on a residential and industrial scale, is in its nascent phase. However, certain equipment and piping can handle both natural gas and green hydrogen. The simple physics involved in creating the necessary BTUs make green hydrogen, at least in certain circumstances, a more viable alternative than complete electrification. Thus, amending the bill so it unequivocally states that piping and other appliances that can demonstrate an ability to employ green hydrogen are permissible would forward that path.

If you have any questions about how your municipality may address potential required building electrification, please contact [Daniel Spitzer](#) (716.848.1420), [Alicia Legland](#) (518.433.2416), or another member of the Hodgson Russ Environment, [Renewable Energy](#), or [Municipal Law](#) Practices.

[1] Architecture 2030, <https://architecture2030.org/why-the-building-sector/#:~:text=Buildings%20generate%20nearly%2040%25%20of,of%20the%20building%20stock%20annually>.

[2] *Id.* at 4 (citing SF Environment and Siemens, *Reaching 80x50: Technology Pathways to a Sustainable Future* (2016) (a study out of San Francisco found that “widespread adoption of electric heat pumps to be the ‘single most important lever considered.’”)). https://sfenvironment.org/sites/default/files/fliers/files/sfe_cc_sustainable_future_siemens_climate_report.pdf.

[3] S.B. S6843A, 2021-2022 Sess. (N.Y. 2021).

[4] *Id.*

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[5] Tom DiChristopher, *Gas Ban Monitor: Building electrification evolves as 19 states prohibit bans*, S&P Global Market Intelligence (July 20, 2021), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/gas-ban-monitor-building-electrification-evolves-as-19-states-prohibit-bans-65518738>.

[6] *Id.*