

April 2, 2018

## Concerns Regarding the Retrofit Bill, Intro 1745

ACEC New York offers the following comments on Intro 1745:

1. **Liability.** ACEC New York members are concerned about the professional liability ramifications of limits on absolute actual annual total and fossil fuel energy consumption of specific buildings, because the causal mechanisms of non-compliance are neither obvious nor straightforward. The energy consumption of a building is a function not only of the *design* and physical configuration of the building (including building envelope, lighting, HVAC, and service water heating systems, generally specified during the design phase), but also the quality and accuracy of the *construction* of the building by contractors (a highly variable parameter in the NYC market), type and energy usage of occupant-installed equipment, occupant-determined patterns of use and owner-determined *operations* procedures. All of these factors interact to produce the final rate of energy consumption.

Heretofore, for minimum energy code compliance, simple prescriptive (easily verified) energy conserving measures are required, or alternatively, energy modeling is utilized to establish not the projected absolute level of energy consumption of a building, but the comparative consumption between the proposed design and a reference benchmark. As a result, most of the factors that are not in the control of the design and construction team are normalized out of the comparison. For Intro 1745, these factors will play an important role in determining exactly how much energy the building will use. As such, it is critical that the bill includes appropriate reference standards for performance of each of these critical functions (design, construction and operations) such that the risks associated with these responsibilities can be readily accommodated within contractual relationships between stakeholders and mitigated with commercially available insurance products. To the extent that these reference standards do not yet exist within the marketplace, a structured process comprised of expert working groups must be specified for the purpose of creating these reference standards.

2. **Coordination with LL 32.** The requirements of the outcome-based requirements of Intro 1745 should, at a reasonable level, coordinate with those of recently enacted LL32 (Intro 1629). A building designed in accordance with LL32 should yield actual energy performance that complies with Intro 1745.
3. **Resources for Implementation.** Specific provisions should be included to allow DEP to allocate the necessary resources to adequately administer this regulation.
4. **NYC Landmark Buildings.** Appropriate treatment of landmark designated buildings should be included—they should be similarly regulated in an appropriate manner.

5. **Incentivize Least Expensive Buildings.** A mechanism should be included to incentivize those buildings that are the least expensive to alter in order to achieve the required performance—and allow owners of other, less feasible buildings to support these alterations as a means of achieving compliance (i.e., a simplified Cap and Trade system). Also, a clear understanding of the local grid implications of “electrification” is essential before finalizing these regulatory requirements.
6. **Specifying Technologies/Cogeneration.** We recommend NOT specifying specific cogeneration technologies (e.g. microturbines) in the bill to allow free market flexibility and innovation.
7. **Exemptions for Institutions.** Some regulatory obligation for Institutions that utilize cogeneration should be included (i.e, eliminate the blanket exemption).

We appreciate the opportunity to submit comments on this draft bill. If you have any questions or would like to meeting to discuss these comments with representatives of our Metro Region Energy Codes Committee, please let us know.

Sincerely,  
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