

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK, NY 10036-6689

COMMITTEE ON ENERGY
COMMITTEE ON ENVIRONMENTAL LAW

May 31, 2005

The Honorable Gifford Miller
Speaker
City Council of the City of New York
City Hall
New York, New York 10007

Re: Proposed Energy Efficiency and Green Building Legislation

Dear Speaker Miller:

This letter is submitted on behalf of the Committees on Energy and Environmental Law of the Association of the Bar of the City of New York (hereinafter "the Committees") in support of certain proposed legislation currently before the City Council concerning energy efficiency and green building design. Members of the Committees are drawn from the private, government and public interest sectors and represent diverse viewpoints with respect to energy and environmental matters in the City and the State. It is, therefore, with great interest that the Committees present these comments and recommendations to the City Council.

In keeping with the Committees' interest in energy policy and legislation, in June 2004, the Committees received an in-depth briefing from the Economic Development Corporation with respect to the 2004 Report of the Mayor's Energy Policy Task Force. On March 1, 2005, we were honored to have Council Member James F. Gennaro speak with the Committees regarding Intro. No. 324, concerning LEED requirements at City-owned and City-funded construction projects. Council Member Gennaro also reviewed with the Committees a package of proposed energy-related legislation currently before the Council. At the same meeting, we were also fortunate to have representatives of the City's Department of Buildings to discuss proposed changes in the City's Building Code to incorporate certain high performance standards based on the State's Conservation Code.

After the March 1 meeting, the Committees reviewed energy-related bills that have been introduced in the City Council during 2004 and thus far in 2005.¹ Without taking a position on all of the legislation at this time, the Committees respectfully submit to the Council the following comments and recommendations with respect to certain of the proposed legislation as enumerated below:

Intro. No. 324²

Intro. No. 324 requires that all city-owned and city-funded construction projects utilize high performance methods and technologies such that the building(s) will be LEED Certified at the Silver Level.³ As primary sponsor of the bill, you are of course aware of the importance of such legislation in promoting high performance building in the City of New York. This requirement is also consistent with the policy recommendations of the Mayor's Energy Policy Task Force.

The LEED program is well established and accepted by architects and engineers nationwide. The City's own Department of Design and Construction has endorsed the LEED program and, in fact, should be commended for seeking Platinum Certification on its new building at the Queens Botanical Garden. Studies have shown that any increased costs of building "green" are to a large extent due to upfront design and engineering costs and not to construction materials.⁴ The requirements of Intro. No. 324 will allow the City to lead by example and, as more experience is gained, will ultimately reduce the upfront design and engineering costs associated with green building design for all projects, in addition to the obvious reduction in long-term energy and water costs. With respect to City-owned projects, the City should work with the New York Power Authority to expand its Energy Cost Reduction (ENCORE) Program to finance any potential increase in construction costs.⁵

While the Committees support the passage of Intro. 324, they do so with the recommendation that there be two important amendments:

First, the definition of "city-funded" should be clarified to enumerate specific types of city funding used to support projects, including but not limited to the use of the City's bonding authority (e.g., IDA bonds, Liberty Bonds, etc.), Tax Increment

¹ The Committees reviewed Intro. Nos. 324-2004, 438-2004, 374-2004, 375-2004, 378-2004, 379-2004, 381-2004, 382-2004, 383-2004, 536-2005, and 546-2005. Comments on proposed legislation not addressed in this letter may be developed at a later time.

² Before the Committee on Housing and Buildings (Madeline T. Provenzano, Chair); Lead Sponsor, Speaker Miller.

³ LEED (Leadership in Energy and Environmental Design) is a green building rating system developed by the United States Green Building Council. A building may also be certified at Gold and Platinum levels.

⁴ See, for example: Gregory H. Kats, "Green Building Costs and Financial Benefits," published for the Massachusetts Technology Collaborative, 2003.

⁵ As you may know, under the ENCORE program, NYPA offers low-cost financing to the City for energy efficiency projects and the City uses the energy savings over time to pay for the project.

Financing, and the City's construction of major support infrastructure such as mass transportation facilities, highway access ramps, and platforms over railroad tracks and highways. If the City is going to expend significant resources to support a development project, then LEED certification of that project should be the minimum required in order to encourage economic development while avoiding a strain on the City's energy and water supplies.

Second, the Committees have carefully reviewed the exemptions from LEED Certification contained in the bill. The Committees oppose the exemption of occupancy groups J-1 (hotels) and J-2 (residential). There is no justification for exempting hotels. In fact, they are ideal candidates for LEED Certification. With respect to residential housing (1-2 family houses are exempt under J-3), as discussed above, high performance building has been shown to result in immediate cost savings in energy and water use. The Council staff has indicated that the exemption is in the bill so that there will be no disincentive for the construction of affordable housing. This, however, is not a valid explanation for the exemption. The cost savings from green design over the long-term will only help to maintain the affordability of the housing and studies are now emerging that demonstrate the cost effectiveness of building green for developers of affordable housing. New York City Comptroller Bill Thompson, in a recent speech before the High Performance Building Academy at CUNY on April 4, 2005, noted the "burst of green affordable housing developments" and the Comptroller's Economically Targeted Investment program, a debt-based investment program that enables the City's pension funds to invest in financing for low- and middle-income housing, that will be looking for investment in green affordable housing.

Therefore, the requirements for LEED Certification should be made immediately applicable to residential housing. If there is a true concern on the part of the Council for the potential increase in upfront construction costs for affordable housing, then the Committees would support a one year delay in the applicability of the LEED requirements only with respect to affordable housing, to allow the Council to undertake a study of the impact of the legislation on the construction of affordable housing. This should not be used, however, as an excuse to exempt residential housing generally.

Intro. No. 379⁶

Intro. No. 379 requires landlords to purchase Energy Star certified household appliances for rental apartments whenever they are to be replaced by the landlord. Household appliances are to include refrigerators, room air conditioners for which the landlord is responsible, dishwashers, ceiling fans, light fixtures and windows. The Committees strongly support the passage of this bill.

The bill does not accelerate any replacement schedules. Energy Star products are readily available and the differential costs between Energy Star and non-Energy Star

⁶ Before the Committee on Housing and Buildings (Madeline T. Provenzano, Chair); Lead Sponsor, Council Member Clarke; Co-Sponsored by the Speaker.

products have been reduced dramatically in the past few years. In contrast, the energy savings differential remains substantial. This minimal investment by the landlords will of course benefit the tenants directly but will also benefit themselves and the rest of the City generally because the responsible use of energy leads to a more stable and economic energy supply. Many landlords are already purchasing Energy Star products as an amenity to tenants with the small cost absorbed partially by the tenants in their rent, to be made up in reduced energy costs.

Intro. Nos. 381 and 382⁷

Intro. No. 381 requires the Department of Citywide Administrative Services (DCAS) to conduct a survey of all city-owned buildings to determine the potential for use of clean on-site generation projects at city-owned facilities. Clean on-site generation is defined to include co-generation, solar, wind, anaerobic digesters, and fuel cells. The requirement is drawn directly from the recommendations of the Energy Policy Task Force. The Department of Environmental Protection is already in the process of installing fuel cells to utilize the methane at its sewage treatment plants. A more extensive survey of City installations could spur other innovative energy technologies that might be useable within the private sector as well. Therefore, the Committees urge passage of this legislation.

Intro. No. 382 requires DCAS to develop and implement a commissioning program for all city-owned buildings and a training program for building management staff to assure that buildings are operated and maintained with energy-efficiency as a top priority. As with the clean on-site generation provision discussed above, the requirements set forth in Intro. No. 382 come from the Energy Policy Task Force report. Therefore, the Committees also support passage of this legislation as part of an overall effort to help the City manage its energy needs in a more sustainable manner.⁸

⁷ Before the Committee on Environmental Protection (James F. Gennaro, Chair); Lead Sponsor, Council Member Gennaro.

⁸ A provision of Intro. No. 375 currently before the Committee on Environmental Protection and sponsored by the Speaker and the Committee's Chair, Council Member James F. Gennaro, would require the development of a formal citywide energy efficiency and conservation plan to be submitted to the Council and updated regularly. Work toward development of the plan may have already started at the Economic Development Corporation (EDC) as it was a recommendation of the Energy Policy Task Force that the City have such a plan. Formalizing in legislation a requirement to prepare such a plan might be helpful to assure completion and publication within a finite time. The plan would incorporate what was learned from Intro. Nos. 381 and 382, as well as include requirements such as those provided for in Intro. No. 378, currently before the Committee on Technology in Government and sponsored by the Committee's Chair, Council Member Gale A. Brewer, to assure the most effective use of the energy saving features on city-owned office equipment. Therefore, to the extent that legislation will be introduced to require development of the plan, the Committees support such provision. Intro. No. 375 as currently drafted also would establish an energy office in the Mayor's office. The energy office already exists in the EDC and has, in fact, done an outstanding job. It is not necessary to either duplicate its efforts or to move the office.

Intro. No. 536⁹

Intro. No. 536 is designed to amend current legislation and expand the City's procurement requirements for energy efficient products. This legislation is very important generally in significantly reducing the City's energy needs. The Committees wish to highlight the importance of amending the current requirements to lower the number of manufacturers that must produce these products in order to make the procurement obligation mandatory. The current number of manufacturers is six and Intro. No. 536 will lower that number to three, a necessary and reasonable change.

Future Initiatives

Members of the Committees have been variously involved in initiatives relating to energy demand-side management, advanced interval submetering, time-differentiated and real-time pricing, off-peak thermal storage, solar water heating, green roofs, and other energy conservation and demand reduction technologies. We recognize that it is important to consider the merits of providing incentives for these and other similar technologies.¹⁰ The energy savings and peak demand reduction possibilities of implementing such technologies are well established and may produce significant benefits to New York City residents and businesses. The Committees would look forward to working with the City Council to explore appropriate legislation which would encourage the implementation and use of these technologies.

⁹ Before the Committee on Environmental Protection (James F. Gennaro, Chair); Lead Sponsor, Council Member Gennaro.

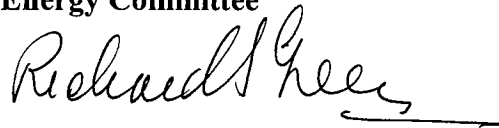
¹⁰ For example, Local Law 44 of 2001 allowed J-51 tax abatement for certain eligible properties to encourage submetering. Intro. No. 524 from 2003 proposed extension of these benefits to other energy conservation and load control measures. It appears worthwhile to consider the benefits and cost-effectiveness of additional, more broadly applicable, incentives in light of the City's growing energy requirements. As noted earlier in this letter, the Committee is not at this time commenting directly on Intro. 383-2004 relating to green and reflective roofing requirements. The Committees may comment in more detail later in the larger context of available energy conservation and demand-reduction technologies.

The Committees would be pleased to discuss their recommendations with you further and to assist you in any way on these important matters.

Respectfully,

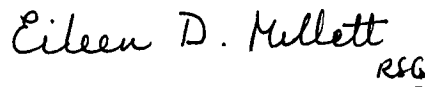
**The Association of the Bar of the
City of New York**

Energy Committee



**Richard S. Green, Esq.
Chair**

Environmental Law Committee



**Eileen D. Millett, Esq.
Chair**

Cc: Hon. James F. Gennaro, Chair, Environmental Protection
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Hon. Gale A. Brewer, Chair, Technology in Government
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Gil C. Quiniones, Senior Vice President of Energy, NYCEDC