

July 10, 2009

Hon. James Gennaro
Chair, Environmental Protection Committee
New York City Council
250 Broadway, 17th Fl.
New York, NY 10007

Dear Chairman Gennaro:

I am submitting this letter in lieu of testimony on the suite of Green Buildings legislation considered at a hearing of the Committee on Environmental Protection on June 26, 2009. The Building Congress strongly supports your efforts to work with Mayor Bloomberg to implement forward-looking legislation that would reduce energy consumption in existing New York City buildings. We support the intent of these bills but remain concerned about how the proposed changes will be implemented to avoid negatively impacting building operations.

The Building Congress supports two of the four bills considered at the hearing: Intro 476-A, which would require benchmarking and reporting of energy and water consumption of individual buildings; and Intro 973 which would mandate the installation of energy efficient lighting systems in larger buildings. Taken together, these bills will advance efforts to conserve valuable resources and reduce the City's carbon footprint.

We are also supportive of the objectives of Intro 564-A, which would create a New York City Energy Conservation Construction Code ("NYCECCC") that most new construction and capital improvements in buildings larger than 50,000 square feet would have to comply with; and Intro 967, which would require buildings to undergo a comprehensive energy use audit by a New York City Department of Buildings (DOB) approved "energy professional." However, the Building Congress is concerned about overly broad language and insufficient cost considerations in these bills and believe they require further clarification before they are passed.

Intro 564-A calls for the creation of the New York City Energy Conservation Construction Code. The NYCECCC would largely mirror existing state law but would do away with exemptions for renovations impacting less than 50% of a building system or subsystem (and certain other exempted renovations). This means almost all systems or subsystems impacted even minimally by renovations covered by DOB permits issued after January 1, 2010 would need to be upgraded to comply with the NYCECCC.

The stated intent is that only those systems which are being altered would need to comply. However, NYC DOB would need to develop rules with examples outlining how the code will be specifically applied to different types of renovations. The legislation should assure that such rules would be based on reasonableness and technical feasibility. Furthermore, it is suggested that the renovation threshold be lowered from 50% to 20% of the system value but not eliminated to avoid overreaching enforcement, which could create disincentives detouring system maintenance. The 20% threshold should be calculated on cost of specific work compared to replacement cost of system.

Intro 967 would require an “energy professional” to audit a building and provide the building owner with retro-commissioning and retrofitting measures required to improve energy efficiency. We believe that mandatory audits and commissioning reports are a good idea which would periodically provide landlord and owners information they can use to make intelligent energy-conservation investment decisions. However, the bill must clearly define the professional qualifications and require completion of a recognized training program for this new category of building inspector. The bill must also better define the scope of audits to avoid giving potentially unlimited authority to energy professionals to mandate improvements.

Furthermore, Intro 967 does not adequately consider the potential cost impacts of mandated improvements. The bill makes an initial effort to address this issue by establishing a seven-year payback period for any capital investment, as well as a complaint process if a building owner can demonstrate that the costs of the improvements are significantly higher than estimated in the audit. However, it does not establish any methodology for measuring this payback, nor does it create sufficient protections for unforeseen cost overruns on this work.

Finally, neither Intro 564 nor Intro 964 address how the costs and benefits of improvements are to be shared between owners and existing tenants. As it stands, under a typical lease arrangement, both bills could create a split incentive where the cost of upgrading systems is borne by the owner while the benefit derived from lower energy costs accrues entirely to the tenant, or vice versa. Future legislation must factor in that existing leases will endure well beyond the bill’s implementation date and must permit equitable resolution of the cost/benefit conflict.

To better understand the implications of Intro 967 and 564-A, the Building Congress recommends temporarily setting aside passage of this legislation until more information on the updated Energy Codes is available and actionable data on the City’s efforts to retrofit and retro-commission its own facilities is available and the costs and challenges are better understood. The City’s efforts should be measured in a publicly-available report and should include key indicators like a generally accepted measurement of payback periods.

The Building Congress has consistently advocated wise energy use and, therefore, strongly supports the City Council's efforts to encourage the modernization and "greening" of our building stock. We look forward to working with the Council and the Bloomberg Administration to help ensure the City's buildings are both energy efficient and financially stable.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Anderson", with a stylized flourish at the end.

Richard T. Anderson
President

Cc: Speaker Christine Quinn
Deputy Mayor Robert Lieber