Edwin L. Crawford Memorial Program

Implementing Sustainable Development at the Local Level

November 17, 2023
# Edwin L. Crawford Memorial Program on Municipal Law:
Implementing Sustainable Development at the Local Level

November 17, 2023

## Agenda

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## Speaker Biographies

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## Clean Energy Siting Resources from the New York State Energy Research and Development Authority (NYSERDA)

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## Resources from the New York City Mayor’s Office of Climate and Environmental Justice

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## Resources from the Village of Hastings-on-Hudson, NY

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## FY 2024 Enacted Budget Overview, New York State Division of the Budget

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Edwin L. Crawford Memorial Program on Municipal Law
Implementing Sustainable Development at the Local Level
November 17, 2023

Agenda

9:30 a.m. – 10:00 a.m.  Registration – 4th Floor Foyer

10:00 a.m. – 10:15 a.m. Welcome – Dean Alexander Moot Courtroom (Room 421)
Hon. Leslie E. Stein (ret.) ’81 – Deputy Director, Government Law Center at Albany Law School
President and Dean Cinnamon P. Carlarne – Albany Law School

10:15 a.m. – 10:30 a.m. Keynote Address – Dean Alexander Moot Courtroom (Room 421)
Doreen M. Harris – President and CEO, NYSERDA

10:30 a.m. – 12 p.m. CLE Panel Discussion: The Role of Local Governments in Building Decarbonization
Elizabeth Bough Martin – Mayor, Village of Chittenango, NY
Rebecca Filbey – Team Lead, New Construction Program, NYSERDA
Malak Nassereddine – NY Senior Manager, Utility and Regulatory Policy, Building Decarbonization Coalition
Prof. Keith Hirokawa – Distinguished Professor of Law, Albany Law School (moderator)

12:00 p.m. – 1:00 p.m. Lunch Break – Matthew Bender – Room 425

1:15 p.m. – 2:45 p.m. CLE Panel Discussion: The Role of Local Governments in Investing in Renewable Energy – Dean Alexander Moot Courtroom (Room 421)
Niki Armacost – Mayor, Village of Hastings-on-Hudson, NY
Madison Hertzog – New York City Mayor’s Office of Climate and Environmental Justice
Jennifer Manierre – Director, Clean Energy Siting, NYSERDA
Javid Afzali ’12 – Partner, Harris Beach, PLLC (moderator)

2:45 p.m. – 3:45 p.m. Breakout Sessions – Dean Alexander Moot Courtroom (Room 421) and Matthew Bender Classroom (Room 425)

3:45 p.m. – 4:00 p.m. Reports from Breakout Sessions – Dean Alexander Moot Courtroom (Room 421)
Speaker Biographies

JAVID AFZALI ’12 (moderator) is a Partner at Harris Beach, PLLC. As a commercial litigator and trusted strategic advisor, he directly with company principals and in-house counsel to help them achieve their goals related to corporate governance, project development, corporate and commercial dispute resolution, and business and ownership separations. Mr. Afzali assists companies, developers, commercial property owners, individuals and municipalities across New York with permitting and litigation involving land use and zoning, environmental approvals, construction contract disputes, insurance coverage and municipal rezoning and annexation. In this capacity, he has appeared before state and federal courts and administrative agencies such as the New York State Department of Environmental Conservation, the New York State Department of State, and the New York State Department of Labor on matters involving siting of solar, wind and nuclear power generation facilities, mining operations, and large scale gaming and recreational facilities.

Mr. Afzali also has extensive experience representing commercial developers, property owners, cooperatives and condominiums in New York City. He has appeared before all levels of courts in New York City and Brooklyn to advocate for his client’s rights. He serves these clients’ unique needs in the areas of corporate governance, finance, shareholder/unit holder dispute resolution, contractor disputes, sponsor disputes, real estate, permitting, and buildings violations.

Mr. Afzali serves as an Officer in the United States Army (Reserves) Judge Advocate General (JAG) Corps. He is a graduate of Albany Law School and Siena College. He is admitted to practice law in New York, the U.S. Court of Appeals, Second Circuit, the U.S. District Court for the Eastern, Northern, Southern, and Western Districts, and the U.S. Supreme Court.

NIKI ARMACOST is the current Mayor of the Village of Hastings-on-Hudson, NY, since her election in 2019. Prior to this role, she served as a Village Trustee since 2009. As Mayor, she has promoted sustainability initiatives and building local resiliency to climate change. Under her leadership, Hastings-on-Hudson is currently the highest-ranking Clean Energy Community (CEC) and Climate Smart Community (CSC) in New York State. The municipality adopted the New York Stretch Energy Code, expanded financing for energy efficiency through Open C-PACE financing, passed a Low-Embodied Carbon Concrete Resolution, invested in EVs, alternative fuel infrastructure and resiliency planning, promoted “buy local” initiatives, dedicated over 85% of municipal-owned open space as parkland and supported local pollinator pathway initiatives.

Ms. Armacost is Founder and Managing Director of Arc Finance, Ltd., a not-for-profit organization that finances clean energy and water in a range of countries in Asia, Africa, and Latin America. Previously, she worked at Women’s World Banking, a global microfinance network, and is an advisor to a number of companies focused on off-grid energy. Ms. Armacost
is a graduate of York University Osgoode Hall Law School (LLM), Queen’s University (LLB), and the University of Toronto, Victoria University (BA, International Relations).

**REBECCA FILBEY** is Team Lead for the New Construction Program at the New York State Energy Research and Development Authority (NYSERDA), where she supports NYSERDA’s efforts to advance clean and resilient buildings in the state. She joined NYSERDA in November 2020 as a Program Manager for Utility Affairs & Strategic Partnerships. She has extensive experience overseeing projects that promote energy efficiency and renewable energy. Ms. Filbey is a graduate of the University of Edinburgh (M.Sc., Environmental Sustainability), the University of Oxford (M.St.), and Wake Forest University (B.S., Biology).

**DOREEN M. HARRIS** is President and CEO of the New York State Energy Research and Development Authority (NYSERDA). She was appointed on April 7, 2021, after serving as Acting President and CEO since June 2020, to lead NYSERDA’s work to advance clean energy technology solutions that will help New York State meet its goal of reducing greenhouse gas emissions by no less than 85 percent by 2050 while creating clean-energy jobs and building an equitable economy. Ms. Harris co-chaired the New York State Climate Action Council, which finalized the State’s Scoping Plan in December 2022. Ms. Harris joined NYSERDA in 2010 and served as Vice President of Large-Scale Renewables. Prior to her career in public service, Ms. Harris spent more than a decade in the private sector, serving in management and engineering roles at Alcoa Advanced Technologies, Optimization Technology, and Global Water Technologies, Inc. She is a graduate of the University at Albany, SUNY (MBA) and the University of Rochester (BSc, Chemical Engineering).

**MADISON HERTZOG** is an Energy Policy Advisor on the Clean Energy Team at the New York City Mayor’s Office of Climate and Environmental Justice (“MOCJ”). Ms. Hertzog oversees the City’s regulatory portfolio. She manages inter-agency comments to the New York State Public Service Commission (PSC) proceedings, which typically include utility rate cases, gas system long-term planning, climate-related docket proceedings, transmission planning, energy affordability, and the Climate Leadership and Community Protection Act. In this role, Ms. Hertzog works to advance policy and programs that direct investments and resources to Environmental Justice and Disadvantaged Communities, reduce energy cost burden, and place the interests of New York rate payers at the forefront of utility long-term planning. A proud member of the Clean Energy Team, Ms. Hertzog works closely with her colleagues to develop regulatory, market-based, and legal solutions to overcome systemic barriers and challenges for community clean energy development in New York City.

Ms. Hertzog graduated from Vermont Law School in 2022 with a J.D. and concentration in energy law. As a law student, she served as one of the Senior Staff Production Editors of the 2021 Vermont Journal of Environmental Law. As a first-year member of the Environmental Law Journal, Madison authored the note *Extreme Makeover: Microgrid Edition*, which discussed the deployment of the Gonzales, CA, microgrid project. Ms. Hertzog is graduated from The George Washington University in 2018 with a B.A. in International Affairs, Environmental Studies, and a minor in sustainability. She received a M.A. in Environmental Resource Policy from the Trachtenberg School of Public Policy and Public Administration at GWU in 2019.
KEITH HIROKAWA (moderator) is Distinguished Professor of Law at Albany Law School, where he teaches courses involving environmental and natural resources law, land use planning, property law, and jurisprudence. Professor Hirokawa's scholarship has explored convergences in ecology, ethics, economics, and law, with particular attention given to local environmental law, ecosystem services policy, watershed management, and environmental impact analysis.

Prior to joining the faculty at Albany Law, Professor Hirokawa was an Associate Professor at Texas Wesleyan University School of Law and an Adjunct Professor at the University of Oregon School of Law. Professor Hirokawa practiced land use and environmental law in Oregon and Washington and was heavily involved with community groups and nonprofit organizations. Professor Hirokawa is a graduate of the University of Connecticut (JD, MA), Lewis & Clark Law School (LLM), and Ursinus College (BA).

JENNIFER MANIERRE is the Director of Clean Energy Siting at the New York State Energy Research and Development Authority (NYSERDA), where she helps guide local government officials through best practices and appropriate local laws and permitting procedures for solar, wind, and battery energy storage. Ms. Manierre joined NYSERDA's Clean Energy Siting team in 2019, first as a Senior Project Manager, then as a Program Manager beginning in May 2021, and has been Director since August 2023.

Ms. Manierre received her B.A. from Hamilton College with a concentration in Geology and a minor in Economics. She also holds a Master's degree in Education from Elmira College and a Master's degree in Ecological Economics, Values, and Policy from Rensselaer Polytechnic Institute. She is a Certified Energy Manager and a LEED Accredited Professional with a specialization in Neighborhood Development.

ELIZABETH BOUGH MARTIN is the current Mayor of the Village of Chittenango, NY. She has 20 years of experience working with and for governments in New York State. Prior to being mayor, she served as Deputy Mayor and Park Commissioner. Before she moved to Chittenango, Mayor Martin served as central program staff in the New York State Assembly where she advised and drafted policy/bills on environmental regulation, agriculture and local government. She provided colleagues with backup on advising Assembly Members on transportation, tourism and, economic development.

Mayor Martin taught courses in local government and navigating New York's environmental regulations at Onondaga Community College for 13 years. She is a graduate of the Rockefeller College at the University of Albany, SUNY (PhD, Public Administration), Syracuse University (MPA), and SUNY College of Environmental Science and Forestry (MPS, Environmental Science and Democratic Process).

MALAK NASSEREDDINE is an attorney and policy specialist. She is the NY Senior Utility and Regulatory Policy Manager at the Building Decarbonization Coalition, where she engages New York State’s utility providers and regulatory agencies. Prior to joining BDC, Ms. Nassereddine served as an Assistant Deputy Director, in the New York City Council’s Legislative Division, where she worked on a wide range of legislation, including updating
New York City's Environmentally Preferable Purchasing program, expanding the City’s idling law and establishing a citywide composting program.

Prior to working with the New York City Council, Ms. Nassereddine was a litigator in private practice in Toronto, Canada. She is a graduate of York University Osgoode Hall Law School and the University of Windsor.
Clean Energy Siting Resources from the New York State Energy Research and Development Authority (NYSERDA)


EV Charging Station Permitting Resources: https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting-Resources/EV-Charging-Station-Permitting-Resources.

Transitioning Underused Spaces: https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting-Resources/Transitioning-Underused-Spaces.

Battery Energy Storage System Model Law

For local governments to utilize when drafting local laws and regulations for battery energy storage systems.
Section Contents

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Overview

The Model Law is intended to help local government officials and AHJs adopt legislation and regulations to responsibly accommodate battery energy storage systems in their communities. The Model Law lays out procedural frameworks and substantive requirements for residential, commercial, and utility-scale battery energy storage systems.

The workable version of this document can be found at nyserda.ny.gov/Energy-Storage-Guidebook, under Battery Energy Storage System Model Law tab.

1. Instructions

1. This Model Law can be adopted by the governing board of cities, towns, and villages (hereinafter “local governments” or “municipalities”) to regulate the installation, operation, maintenance, and decommissioning of battery energy storage systems. The Model Law is intended to be an “all-inclusive” local law, regulating the subject of battery energy storage systems under typical zoning and land use regulations and it includes the process for compliance with the State Environmental Quality Review Act. Municipalities should review this Model Law, examine their local laws and regulations and the types, size range and number of battery energy storage system projects proposed, and adopt a local law addressing the aspects of battery energy storage system development that make the most sense for each municipality, deleting, modifying, or adding other provisions as appropriate.

2. This Model Law references a “Battery Energy Storage System Model Permit” that is available as part of NYSERDA’s Battery Energy Storage Guidebook. The Model Permit is intended to help local government officials and AHJs establish the minimum submittal requirements for electrical and structural plan review that are necessary when permitting residential and small commercial battery energy storage systems.

3. In some cases, there may be multiple approaches to regulate a certain aspect of battery energy storage systems. The word “OR” has been placed in the text of the model law to indicate these options. Municipalities should choose the option that works best for their communities. The content provided in brackets and highlighted is optional. Depending on local circumstances, a municipality may want to include this content or choose to adopt a different standard.

4. The Model Law is not intended for adoption precisely as it is written. It is intended to be advisory only, and users should not rely upon it as legal advice. A municipality is not required to adopt this Model Law. Municipal officials are urged to seek legal advice from their attorneys before enacting a battery energy storage system law. Municipalities must carefully consider how the language in this Model Law may be modified to suit local conditions, comprehensive plans, and existing land use and zoning provisions.
5. Before enacting this Model Law, a comprehensive plan outlining the goals and policies for the installation, operation, maintenance, and decommissioning of battery energy storage systems must be adopted by the local governing board (city or common council, town board, village board of trustees). Some local governing boards can satisfy this requirement by updating an existing comprehensive plan while others must adopt a new comprehensive plan. Suggestions on how local governing boards can develop and adopt in their existing or new comprehensive plans battery energy storage system friendly policies and plans that provide local protection are listed below:

A. Adopt a resolution or policy statement that outlines a strategy for municipal-wide battery energy storage system development. The chief executive officer of a local government (like a town supervisor or city or village mayor) may choose to issue in accordance with its local charter or other valid local law or regulations an executive order, proclamation or other declaration to advance battery energy storage system development.

B. Appoint a Battery Energy Storage Task Force (“Task Force”) that represents all interested stakeholders, including residents, businesses, interested non-profit organizations, the battery energy storage industry, utilities, and relevant municipal officials and staff to prepare an action plan, adopt or amend a comprehensive plan to include battery energy storage system planning goals and actions, and develop local laws and/or other regulations to ensure the orderly development of battery energy storage system projects.

C. Charge the Task Force with conducting meetings on a communitywide basis to involve all key stakeholders, gather all available ideas, identify divergent groups and views, and secure support from the entire community. The Task Force should also conduct studies and determine whether existing policies, plans, and land use regulations require amendments to remove barriers to and facilitate battery energy storage system development goals.

D. Establish a training program for local staff and land use boards. Municipalities are encouraged to utilize State and Federal technical assistance and grants for training programs when available.

E. Partner with adjacent communities to adopt compatible policies, plan components, and zoning provisions for battery energy storage system projects. County or regional planning agencies may also advise participating local governments on locally addressing these issues.
2. Model Law

1. Authority

This Battery Energy Storage System Law is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, § 10 (1) and (7); [Select one: sections 261-263 of the Town Law / sections 7-700 through 7-704 of the Village Law / sections 19 and 20 of the City Law and section 10 of the Municipal Home Rule Law] of the State of New York, which authorize the [Village/Town/City] to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

2. Statement of Purpose

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of [Village/Town/City] by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
B. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and
D. To create synergy between battery energy storage system development and [other stated goals of the community pursuant to its Comprehensive Plan].

3. Definitions

As used in this [Article/Chapter], the following terms shall have the meanings indicated:

ANSI: American National Standards Institute

BATTERY(IES): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM: An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

CELL: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

COMMISSIONING: A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.
DEDICATED-USE BUILDING: A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

1) The building’s only use is battery energy storage, energy generation, and other electrical grid-related operations.
2) No other occupancy types are permitted in the building.
3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
   a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
   b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

ENERGY CODE: The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

FIRE CODE: The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL): A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.


NON-DEDICATED-USE BUILDING: All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

NON-PARTICIPATING PROPERTY: Any property that is not a participating property.

NON-PARTICIPATING RESIDENCE: Any residence located on non-participating property.

OCCUPIED COMMUNITY BUILDING: Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

PARTICIPATING PROPERTY: A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

UNIFORM CODE: the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.
4. Applicability
A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in [Village/Town/City] after the effective date of this Local Law, excluding general maintenance and repair.
B. Battery energy storage systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
C. Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Local Law.

5. General Requirements
A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
B. Issuance of permits and approvals by the [Reviewing Board] shall include review pursuant to the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”).
C. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the [Village/Town/City] Code.

6. Permitting Requirements for Tier 1 Battery Energy Storage Systems
Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code and the “Battery Energy Storage System Permit,” and exempt from site plan review.

7. Permitting Requirements for Tier 2 Battery Energy Storage Systems
Tier 2 Battery Energy Storage Systems are permitted through the issuance of a [special use permit] within the [XXXXXXXXXXXXX, XXXXXXXXXX, XXXXXXXXXX] zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.
A. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

1) reviewed by the [Code Enforcement/Zoning Enforcement Officer or Reviewing Board] for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within [10] business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

2) subject to a public hearing to hear all comments for and against the application. The [Reviewing Board] of the [Village/Town/City] shall have a notice printed in a newspaper of general circulation in the [Village/Town/City] at least [5] days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within [200] feet of the property at least [10] days prior to such a hearing. Proof of mailing shall be provided to the [Reviewing Board] at the public hearing.

3) referred to the [County Planning Department] pursuant to General Municipal Law § 239-m if required.

4) upon closing of the public hearing, the [Reviewing Board] shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the [Reviewing Board] and Applicant.
B. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
C. Signage.

1) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.

2) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

D. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

E. Vegetation and tree-cutting. Areas within [10] feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

F. Noise. The [1-hour] average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of [60] dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

G. Decommissioning.

1) Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
   a. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
   b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
   c. The anticipated life of the battery energy storage system;
   d. The estimated decommissioning costs and how said estimate was determined;
   e. The method of ensuring that funds will be available for decommissioning and restoration;
   f. The method by which the decommissioning cost will be kept current;
   g. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
   h. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

2) Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the [Village/Town/City], in a form approved by the [Village/Town/City], for the removal of the battery energy storage system, in an amount to be determined by the [Village/Town/City], for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.
H. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

1) Property lines and physical features, including roads, for the project site.

2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

3) A [one- or three-line] electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.

6) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.

7) Zoning district designation for the parcel(s) of land comprising the project site.

8) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to [Code Enforcement/Zoning Enforcement Officer or Reviewing Board] prior to final inspection and approval and maintained at an approved on-site location.

9) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

10) Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.

11) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

12) Prior to the issuance of the building permit or final approval by the [Reviewing Board], but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.

13) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
   
a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.

b. Procedures for inspection and testing of associated alarms, interlocks, and controls.

   c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.

e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.

f. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.

g. Other procedures as determined necessary by the [Village/Town/City] to provide for the safety of occupants, neighboring properties, and emergency responders.

h. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

I. Special Use Permit Standards.

1) Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.

2) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.

3) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.

4) Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

J. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the [Code Enforcement/Zoning Enforcement Officer] of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the [Code Enforcement/Zoning Enforcement Officer] in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the [Code Enforcement/Zoning Enforcement Officer] in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.
8. Safety
A. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:

1) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
2) UL 1642 (Standard for Lithium Batteries),
3) UL 1741 or UL 62109 (Inverters and Power Converters),
4) Certified under the applicable electrical, building, and fire prevention codes as required.
5) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.

B. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.

C. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

9. Permit Time Frame and Abandonment
A. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of [24] months, provided that a building permit is issued for construction [and/or] construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the [Reviewing Board], within [24] months after approval, [Village/Town/City] may extend the time to complete construction for [180] days. If the owner and/or operator fails to perform substantial construction after [36] months, the approvals shall expire.

B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for [more than one year]. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the [Village/Town/City] may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

10. Enforcement
Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of [Village/Town/City].

11. Severability
The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.
Questions?

If you have any questions about the Battery Energy Storage System Model Law, please email questions to cleanenergyhelp@nyserda.ny.gov or request free technical assistance at nyserda.ny.gov/Energy-Storage-Guidebook. The NYSERDA team looks forward to partnering with communities across the State.
Manage clean energy responsibly in your community

NYSERDA offers resources to help local governments manage clean energy development in their communities. These resources include guidebooks with tools and step-by-step instructions to assist local governments with preparing their communities for clean energy, technical assistance available to help implement the policies and practices, and workshops for local governments to receive training on a variety of clean energy topics. Access all resources at nyserda.ny.gov/siting.

Clean Energy Guidebooks

There are multiple Clean Energy Guidebooks available, inclusive of solar, battery energy storage, and wind, that contain information, tools, and step-by-step instructions to plan for clean energy development in communities. The Guidebooks offer comprehensive information regarding planning and zoning, permitting, inspections, taxes, and more, to help your municipality navigate the clean energy landscape.

Free technical assistance

Access one-on-one technical assistance from our team to help meet your clean energy goals. We work directly with municipalities to:

- Answer questions about clean energy
- Adopt a solar or battery energy storage law
- Update a comprehensive plan for clean energy
- Develop zoning procedures for solar, wind, and energy storage
- Improve and navigate the clean energy permitting process
- Adopt a Payment-in-Lieu-of-Tax resolution
- Assist towns with leasing underutilized lands for solar energy
Workshops

NYSERDA offers free training workshops for municipalities on several topics including zoning and planning, comprehensive planning, code enforcement, and more. Our team will work with your municipality to arrange workshops and provide education on how our resources can help manage clean energy development responsibly for your community. Continuing education credits are offered with the workshops. For counties participating in NYSERDA’s Clean Energy Communities (CEC) Program, hosting county-wide workshops is a High Impact Action that can help earn points toward grant funding and designation. Find more information about the CEC Program at nyserda.ny.gov/cec.

Current Workshops:

**Clean Energy and Your Comprehensive Plan**  
*Annual Training for Planning & Zoning Board of Appeals Members — 1.5–2 hours in length*

Provides an introduction to best practices and strategies for incorporating clean energy goals and objectives into a new or updated municipal comprehensive plan. Information presented in the course ranges from introductory planning and clean energy basics to detailed comprehensive planning strategies.

**Overview of the Model Solar Energy Law**  
*Annual Training for Planning & Zoning Board of Appeals Members — 1.5–2 hours in length*

Offers a review of the Model Solar Energy Law developed by NYSERDA as a best practice guidance. NYSERDA reviewed solar laws statewide and nationally to develop an all-inclusive model for municipalities to use to adopt a solar law.

**Overview of the Model Battery Energy Storage Law**  
*Annual Training for Planning & Zoning Board of Appeals Members — 1.5–2 hours in length*

Offers a review of the Model Battery Energy Storage Law developed by NYSERDA as best practice guidance. This course also reviews battery energy storage technology basics, along with important code considerations with regard to siting battery storage projects.

**Solar Permitting and Inspecting in New York State**  
*Accredited by: NY Dept. of State, Division of Building Standards & Codes — 2 in-service hours*

Provides an in-depth review of the entire process of permitting and inspecting solar systems in New York State from start to finish, including the NYS Unified Solar Permit. Workshop includes topics on code enforcement and administration, uniform fire prevention, and building code.

**Battery Energy Storage for First Responders**  
*Accredited by: NY Dept. of State, Division of Building Standards & Codes — 2 in-service hours*

Identifies potential hazards and safety considerations associated with battery energy storage systems. This course covers fire prevention, compliance with the updated New York State Uniform Code, and emergency response considerations.

Ready to get started?

Learn more about how NYSERDA can help your local government prepare for clean energy development at nyserda.ny.gov/siting or email cleanenergyhelp@nyserda.ny.gov

NYSERDA, a public benefit corporation, offers objective information and analysis, innovative programs, technical expertise, and support to help New Yorkers increase energy efficiency, save money, use renewable energy, and reduce reliance on fossil fuels. NYSERDA professionals work to protect the environment and create clean energy jobs. NYSERDA has been developing partnerships to advance innovative energy solutions in New York State since 1975. To learn more about NYSERDA’s programs, visit nyserda.ny.gov or follow us on Twitter, Facebook, YouTube, or Instagram.
Model Solar Energy
Local Law

For local governments to utilize when drafting local laws and regulations for solar development.
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Overview

The Solar Energy Local Law serves as a resource to help educate local officials about the processes of installing, operating, maintaining, and decommissioning solar energy systems in their respective jurisdictions. Local officials can use the Model Law to evaluate their existing local laws, regulations, and policies and adopt new rules and regulations that facilitate solar development while meeting local needs. Before adopting the Model Law provisions, local officials should consider the role local governments play in solar energy development, how they can plan for solar energy, zoning techniques that facilitate solar development, and other helpful resources.

1. The Role of Local Governments in Solar Energy Development

Local governments have broad authority to adopt land use regulations that encourage the most appropriate use of the land. New York State has empowered its local governments to adopt land use regulations and to review and approve development proposals through various local boards, including local legislatures, planning boards, zoning boards of appeal, and architectural review boards. Local governments adopt zoning and other land use regulations to implement their planning goals and objectives and guide land development.

Zoning is the most commonly and extensively used technique for regulating land uses. Zoning provisions, established in accordance with a comprehensive plan, separate a community into zoning districts and specify the land uses and building dimensions that are permitted in each zone. Other local land use regulations govern the subdivision of land and the planning and design of individual sites. For example, local regulations can determine which uses require site plan review and approval. During site plan review, the designated local board evaluates how a particular parcel is developed. For communities without zoning, site plan regulations are the primary technique for regulating development. In addition, land use regulations may include provisions that protect natural and cultural resources or help facilitate solar energy development. Many of the factors considered under land use regulations go hand in hand with a community’s review under the State Environmental Quality Review Act (SEQRA).

In some circumstances, local land use laws regulating solar energy systems may interact with other State laws. In April 2020, the New York State legislature enacted the Accelerated Renewable Energy Growth and Community Benefit Act (the Act), which created the Department of State’s Office of Renewable Energy Siting (ORES). ORES implements the State’s consolidated and timely review and approval process for major renewable energy facilities. Under the Act, new large-scale renewable energy projects producing 25 MW or more must obtain a permit from ORES, while new renewable energy projects producing between 20 and 25 MW may opt in to the new process. Prior to issuing a final siting permit for a major renewable energy facility, ORES must find that the proposed project complies with any applicable local laws and regulations, except those determined by ORES to be unreasonably burdensome.
Applications for major renewable energy facilities must contain a statement clearly identifying any applicable local comprehensive plan, an indication of whether the proposed facility is consistent with that plan, as well as a list of all substantive local requirements (e.g. laws, resolutions, regulations, standards, and other requirements) applicable to the proposed facility. Permittees must construct and operate permitted facilities in accordance with all applicable and substantive local requirements which are not determined to be unreasonably burdensome. In accordance with the office’s regulations, ORES “may elect to not apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed facility” (NYCRR Chapter XVIII, Title 19 §900-2.25(c)). Applicants may request that ORES not apply a local law or ordinance by including in their application a statement of justification showing the degree of burden caused by a specific requirement.

Whether permitted locally (under local land use regulations and SEQRA) or by ORES, applicants for a solar energy system shall be required to obtain building, electrical, and/or plumbing permit approvals and successful inspections as necessary to ensure full compliance with the New York State Uniform Fire Prevention and Building Code.

**Commentary: The Article 10 Review Process**

Since 2011, energy generating facilities larger than 25 MW (including solar and other renewables) have been permitted in accordance with Public Service Law Article 10 (Article 10), which authorizes a comprehensive application process overseen by the NYS Board on Electric Generation Siting and the Environment (Siting Board).

Although ORES now serves as the sole permitting authority for new major renewable generating facilities, Article 10 remains an important mechanism. Existing projects in initial stages of Article 10 review will continue with this permitting process unless they opt to transfer their application to ORES.

Much like ORES, the Article 10 regulations ensure that the proposed project will adhere to applicable local laws, including regulations related to environmental factors, public health and safety, and the interconnection to and use of water, electric, sewer, telecommunication, fuel, and steam lines in public rights of way. Proposed projects must comply with these laws unless ORES finds a regulation unreasonably burdensome due to existing technology or ratepayer costs or needs.

To learn more about Article 10, visit [https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Siting/Siting-for-Large-Scale-Renewables](https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Siting/Siting-for-Large-Scale-Renewables).
1.1 Comprehensive Planning for Solar Energy

Municipalities should consider amending their local plans before adopting solar energy regulations because local land use regulations must conform to the locality’s comprehensive plan. New York State Village Law § 7-704, General City Law § 20(25), and Town Law § 263 require land use regulations to be “in accordance with a comprehensive plan” or “in accordance with a well-considered plan.” When a local regulation is challenged, courts will examine a municipality’s land use policies, actions, and existing regulations for evidence of the locality’s comprehensive plan. Thus, proactive planning for solar energy development provides significant legal protections for regulations that implement the plan.

Local comprehensive plans also influence ORES permits for large-scale renewable energy projects. Under ORES regulations, applications for major renewable energy facilities must identify applicable local comprehensive plans and indicate whether the proposed facility is consistent with those plans.

Comprehensive plans inventory a community’s needs and assets, develop a shared vision for the future, and build consensus and support for actions that will implement the plan. These plans can create the policy foundation for solar energy regulations through planning goals, objectives, strategies, and implementation measures that facilitate solar energy development. To learn more about comprehensive planning for solar energy, and to access additional comprehensive planning resources, consult NYSERDA’s Clean Energy and Your Comprehensive Plan guide at: www.nyserda.ny.gov/ComprehensivePlan.

**Commentary: Evidence of Comprehensive Planning**

In the event that a municipality’s land use regulations become subject to legal challenge or review, the courts will seek to identify evidence of a comprehensive plan to which the regulations under review must conform. The courts’ thorough review will potentially consider all relevant municipal policies and actions, including but not limited to the following:

- Municipal zoning laws and their legislative findings.
- Previously adopted plans and policies (including topic-specific plans such as agricultural protection or conservation plans)
- Previous land use decisions.
- The local legislature’s minutes.
- Existing conditions (or other) studies.
- Environmental reviews and findings.
1.2 Solar Energy Land Use Regulations

Municipalities can implement local solar plans and policies by adopting solar energy regulations that meet local needs. To develop a solar energy regulation, municipalities should consider completing the following steps.

1.2.1 Ensure the Regulation Conforms to Existing Plans and Policies

As discussed above, solar energy regulations should conform to existing policies and plans by implementing their goals, objectives, and strategies. For example, communities that have farmland protection plans, sustainability plans or climate action plans should ensure that their solar energy regulations align with those plans.

Commentary: Land Use Moratoria – What They Are, and How to Use Them Effectively

A moratorium on development is a local law or ordinance that suspends (for a reasonable time) property owners’ rights to obtain development approvals, intended to grant a community time to consider, draft, and adopt land use plans or rules to respond to new or changing circumstances not adequately dealt with under its current laws.

A moratorium may be general or specific. A general moratorium prevents the consideration and approval of all development in the community. A specific moratorium prevents the consideration and approval of development in a particular geographic area or of a certain type; for example, New York municipalities have previously implemented moratoria focused solely on the construction of docks, telephone antennas, wind turbines, and other types of development.

Communities should be cautious and intentional when considering the adoption of a moratorium. Moratoria involve the suspension of landowners’ right to use their property, are often litigated, and can be invalidated by the courts if the community is unable to show the necessity for the moratorium and its reasonableness under the circumstances.

Key Considerations for Municipalities:

- A moratorium must be reasonable to avoid the risk of being challenged and voided by the courts.
  - Reasonableness is best established by local legislative findings documenting the moratorium’s necessity in light of health/safety risks or a new land use problem that the municipalities’ existing regulations were not designed to handle.
  - The more specific and legitimate the municipality’s plan and timetable for the moratorium are, the more likely the moratorium will be found to be reasonable.
  - Generally, courts are deferential to a local legislature’s findings. However, courts will void a moratorium when there is proof of special facts showing that the municipality acted unreasonably, arbitrarily, or in bad faith in adopting the moratorium.
- A moratorium must be adopted in conformance with all procedures required of any zoning or land use action, including notice, hearing, the formalities of adoption, and filing.
- A moratorium should include specific procedures for requesting a variance from its terms, just as land use regulations have to provide for variances.
- A moratorium does not apply to approved projects where the developer has completed construction or has completed substantial construction in reliance on a development approval or permit.

Resources:
- NYS Department of State: Land Use Moratoria
1.2.2 Collect Relevant Information About Solar Energy Development

When conducting studies and gathering data for solar energy development, local governments should assess existing conditions for relevant infrastructure, including gathering information about local electric distribution from hosting capacity maps.

**Commentary: Hosting Capacity Maps**

The “hosting capacity” of the local electric distribution system may affect solar energy development in a community. Hosting capacity refers to an estimate of the location and quantity of new distributed energy resources (DER), including solar energy systems, which can be interconnected without adversely impacting power quality or requiring costly infrastructure upgrades.

Analyzing local hosting capacity can help communities identify and account for areas with higher or lower potential for solar energy development. The Joint Utilities of New York publish and regularly update hosting capacity maps for public use.

Knowing that development is more likely to occur in areas with available hosting capacity, NYSERDA recommends municipalities consider the following:

- Hosting capacity maps should be analyzed alongside local zoning maps and other resources to help promote solar energy in areas with higher development potential.
- Utility hosting capacity maps do not include high-voltage transmission lines and therefore may not be predictive of all future solar energy development.
- Hosting capacity is subject to change based on factors like grid upgrades and should not be the sole factor shaping a municipality’s planning around clean energy.

For assistance viewing or analyzing a hosting capacity map, please contact NYSERDA’s Clean Energy Siting Team at cleanenergyhelp@nyserda.ny.gov.

**Resources:**

- NYS Department of Public Service: Hosting Capacity Maps and Useful Links [https://www3.dps.ny.gov/W/PSCWeb.nsf/All/6143542BD0775DEC85257FF10056479C](https://www3.dps.ny.gov/W/PSCWeb.nsf/All/6143542BD0775DEC85257FF10056479C)

1.2.3 Involve Stakeholders in Process

Involving stakeholders in the development and implementation of solar energy regulations is crucial to build community support for these mandatory regulations that will affect real change. Municipalities should identify key stakeholders and ensure they are involved in regulation development. To learn more about facilitating meaningful community participation, review the Public Engagement and Education section of NYSERDA’s Clean Energy and Your Comprehensive Plan (www.nyserda.ny.gov/ComprehensivePlan).
1.2.4 Choose the Right Regulatory Tool

Local governments have broad authority to adopt solar energy regulations using a variety of zoning techniques that meet a community’s unique land-use needs and goals. The regulatory tools described below offer different mechanisms and incentives to help municipalities create appropriate solar energy regulations given local circumstances. These include:

(a) Conventional Zoning

The Municipal Home Rule Law, NYS Village Law § 7-702, General City Law § 20(25), and Town Law § 262 empower local governments to adopt zoning regulations that divide a municipality’s land into districts with authorized land uses and building restrictions that limit structure height, lot area coverage, and other building dimensions within each district. Users can consult a municipality’s zoning map to identify the district within which any parcel of land is located. Conventional zoning defines each type of permitted solar energy system based on selected criteria, which may include system type, location, physical size, and nameplate capacity. The zoning law then allows each defined solar energy system as a principal, accessory, secondary or special use within certain zoning districts.

- Principal uses are permitted as-of-right in certain districts
- Accessory uses are subordinate, incidental to, and customarily found in connection with a principal use, and are usually permitted as-of-right but may require additional review in certain districts.
- Conditional or special uses are principal in nature; permit approvals are conditioned upon compliance with specific requirements to mitigate a system’s adverse impacts.

As discussed below, to further limit adverse impacts, site plan regulations may include provisions that require applicants to submit a site plan showing the proposed system’s layout, arrangement, and design to help the municipality evaluate a proposed system’s impacts. The Model Solar Energy Local Law uses a conventional zoning approach to regulate solar energy systems.

A conventional zoning approach may be more familiar and more easily implemented by municipal board members and staff in charge of adopting and enforcing local solar energy regulations. This approach allows municipalities to regulate solar in a manner comparable to other types of development, rather than requiring them to proactively map out and limit solar development to specific areas.

(b) Overlay Zones

Under their delegated power to enact zoning regulations, municipalities may adopt overlay zoning. Overlay zoning contains provisions that apply to an overlay district, which is superimposed over the existing zoning map to designate precise areas where development may be permissible. Overlay provisions apply in addition to or in lieu of underlying zoning requirements, and often provide incentives and waivers to encourage certain types and styles of development.

By creating a solar overlay zone, local governments are tasked with defining specific areas where solar energy systems would be appropriate within the community. Because the underlying zoning district standards still apply to projects in an overlay zone, this approach may help minimize resistance from property owners who have concerns about continuity with existing zoning regulations.
An overlay zoning approach may be preferred if the municipality wishes to define specific areas in which to allow solar development that are not directly aligned with current zoning boundaries. Implementing a solar overlay approach may require additional time and resources, as it requires the municipality to evaluate the entire community based on factors of concern (such as proximity to electric infrastructure, topography, and soil qualities, etc.), identify where to locate systems, and draw the boundaries of the overlay zone on the existing zoning map.

**Solar Overlay Zone Example: Town of Evans, NY**

The Town of Evans utilizes an overlay zone approach as outlined in its 2019 “Solar Energy Systems Law of the Town of Evans” (Solar Law). Under this approach, Type 2 solar energy systems (defined as a small-scale system not exceeding 110% of on-site electricity consumption) are permitted in all zoning districts, while Type 1 systems (large-scale systems which are not sized in accordance with on-site residential or commercial consumption) are permitted only within the Town’s Utility Scale Solar Overlay District.

Projects proposed within the Overlay District – which spans portions of the Town’s agricultural lands, open space, and existing industrial zones – are required to comply with applicable regulations for Type 1 systems as established in the Solar Law. These requirements include minimum lot size, maximum yard, minimum setbacks, orientation, maximum height, maximum energy generation, and other requirements.

**Reference materials:**

- Town of Evans’ Zoning Map: [https://townofevans.org/docs/maps-and-drawings.html](https://townofevans.org/docs/maps-and-drawings.html)

**Floating Zones**

Under its zoning authority, a local government may amend its zoning code to include a “floating zone” which allows for solar energy systems, but does not require an amendment to the zoning map until a project or area is identified for the application of this zone.

Though sometimes referred to as an overlay zone (the terms have been used interchangeably), a floating zone is distinct in that it “floats” in the zoning code until the municipality amends its zoning map to affix the new district to an area that is appropriate for solar development. The municipality can apply the zone upon a developer’s petition, the local legislature’s initiative, or a municipal board’s recommendation. When a developer or landowner applies for the floating zoning to be affixed to their property, they must demonstrate compliance with the floating zone’s conditions and performance objectives, which may include criteria to mitigate project impacts. If approved, the floating zone is applied to the developer’s property on the zoning map, and the applicant may proceed to any subsequent permitting or approval processes.

Like the overlay zone approach, floating zones offer some flexibility in terms of identifying appropriate or preferred areas for solar development. Developers can apply for a floating zone to be applied to any parcel they can show is appropriate for solar development, which may open more areas in the community to solar development. Because of this, floating zones eliminate the municipality’s preliminary burden of determining the most environmentally appropriate areas for solar development. The municipality must only identify appropriate solar project site criteria and standards for inclusion in the floating zone. However, this approach does introduce some uncertainty for developers who must invest in and submit the preliminary application prior to knowing that the floating zone will be applied to a proposed site, and it creates a more elaborate, two-step review process for applicants and local governments.
Solar Overlay/Floating Zone Example: Town of Glenville, NY

In early 2021, the Town of Glenville amended its zoning law to include a “Solar Farm Overlay District.” In practice, the law incorporates aspects of both an overlay and floating zone approach, whereby:

- Designated solar districts do not exist on the Town’s zoning map unless approved on a project-by-project basis;
- Applicants proposing a solar farm must seek a zoning change for the project parcel(s); if approved by the Town Board, a new solar district is created and added to the zoning map;
- The applicant may then submit a site plan application for review by the Town’s Planning and Zoning Commission.

To be approved for a zoning change, an applicant’s preliminary-stage site plan must demonstrate compatibility with surrounding uses, alignment with the Town’s Comprehensive Plan, avoidance of adverse visual impacts, and other criteria. Once approved for a zoning change, the applicant’s submission to the Planning and Zoning Commission will be reviewed for compliance with solar zone and underlying-district-specific standards (setbacks, lot size, etc.) and other requirements established in the zoning law.

Reference materials:


(d) Site Plans

NYS Village Law § 7-725-a, General City Law § 27-a, and Town Law § 274-a authorize municipalities to adopt site plan regulations that govern the development of individual parcels of land through site-specific design and infrastructure standards. Site plan regulations supplement the zoning code’s use and dimensional standards and authorize local boards to review a proposed project’s site design and features to determine potential impacts to the site and neighboring parcels.

Solar energy system regulations can require applicants to submit a site plan showing the proposed system’s layout, arrangement, and design so the municipality can evaluate system impacts. The Model Solar Energy Local Law requires site plans only for projects of certain types and sizes, while ensuring that projects which are unlikely to have significant land use impacts (e.g. rooftop or building-integrated solar) are not subject to onerous permitting requirements.

Commentary: Site Planning for Solar Development Versus Conventional Development

Ground-mounted solar arrays differ from conventional development projects in the following ways:

1. Large-scale solar arrays are a passive principal use with minimal regular activity and disturbance.
2. The amount of land occupied by a solar array may significantly vary project-to-project, from less than an acre to hundreds of acres.
3. The accelerated construction timeframe for solar developments can disturb soils and vegetation and contribute to stormwater runoff.
4. Solar arrays are installed above ground on metal racking systems, often utilizing simple steel piles or ground screws. The bulk of the system is not fixed to the ground and has a minimal footprint, unlike traditional development which has a large, fixed footprint.
5. Solar arrays require vehicular paths, and must account for the movement of vehicles across the natural ground surface.
6. Solar arrays have on-site utility lines and electrical interconnection equipment.
7. Solar arrays require fencing at a large scale.
8. The lifespan of solar panels requires the consideration of system decommissioning and site restoration after a 25- to 30-year term.
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(e) Incentive Zoning

Incentive zoning allows developers to build at greater development densities than permitted under existing zoning in exchange for providing one or more community benefits, such as off-site infrastructure, open space or parks, agrivoltaics, or some other physical, social, or cultural amenity. Incentive zoning is authorized by and must comply with the requirements of Village Law § 7-703, General City Law § 81-d, and Town Law § 261-b, whereby incentives may allow adjustments to zoning requirements for lot coverage, setbacks, or other considerations. The resulting increase in development density may help provide community benefits (e.g. electric bill savings through a community solar subscription), and can mitigate land use impacts by reducing a project’s physical footprint.

If it is not feasible for the development to provide a direct community benefit, the incentive zoning system may allow developers to make cash payments to a municipal trust fund to provide specified benefits elsewhere. It is important to note that local zoning regulations are not to include a mandate for payment as a prerequisite for a zoning approval; frequently, however, solar project developers may be willing to provide payments to the municipality as part of a local benefit package, sometimes referred to as a Host Community Agreement.

1.2.5 Streamline the Project Review Process

Local land use review and approval systems typically involve several local agencies that undertake complicated, uncoordinated, single-issue reviews of a proposed project. It is not uncommon for applicants to have difficulty navigating this complex process, which can result in costly delays. Municipalities can streamline the land use approval system through techniques that simplify, consolidate, clarify, and automate the process. Localities can simplify application requirements, coordinate board reviews, engage the public early in the review process through pre-application meetings, and allow administrative approvals when appropriate. Local staff can improve efficiencies by coordinating with the local utility and state agency staff who will issue any permits required for local approvals. Municipalities can also clarify the process for applicants by creating clear guidelines, developing a road map for them, revising application materials, ensuring transparency throughout the process, and proactively educating the public about the process. Online permitting helps automate the process, and preapplication meetings help get all parties on the same page early in the process, avoiding conflict and confusion later.

1.2.6 Complete a Generic Environmental Impact Statement on the Land use Regulation

Solar energy system regulations must undergo SEQRA review, as do any subsequent solar energy projects approved under those regulations (projects approved under a state-level siting process are subject to a comprehensive alternative review process). To reduce the need for in-depth SEQRA reviews for future projects, the municipality can prepare a Generic Environmental Impact Statement (GEIS) for the solar energy regulation. Authorized by 6 N.Y.C.R.R. § 617:10, a GEIS identifies environmental conditions and develops standards and review thresholds to ensure that future development is compatible with or protective of those conditions. When a final GEIS has been filed, no further SEQRA compliance is required if a subsequent proposed project will conform with the GEIS’s established conditions and thresholds. However, a supplement to the final GEIS must be prepared if the final GEIS did not adequately address the subsequent proposed project and that project may have one or more significant adverse environmental impacts. Additionally, the Part 617 regulations authorize a municipality to charge a portion of its GEIS preparation costs to developers of later projects as they submit permit applications, a highly cost-effective approach.
1.3 Additional Resources

Planning & Land Use Regulation Resources
NYS Department of State Division of Local Government Services
https://dos.ny.gov/publications?f%5B0%5D=filter_term%3A1716

Local Laws Search
NYS Department of State Division of Local Government Services
https://locallaws.dos.ny.gov

Training and Assistance
NYS Department of State Division of Local Government Services
https://dos.ny.gov/training-assistance

Planning and Zoning Training Series
New York Planning Federation
https://nypf.org/services

Property Topics and Concepts
American Planning Association Planning and Law Division
https://www.planning.org/divisions/planningandlaw/propertytopics.htm#Floating

Are You Solar Ready?
American Planning Association
https://www.planning.org/planning/2020/mar/are-you-solar-ready

Planning Implementation Tools: Overlay Zoning
University of Wisconsin-Stevens Point, Center for Land Use Education
2. Model Solar Energy Local Law

The Model Solar Energy Local Law can be found on the following page and at www.nyserda.ny.gov/SolarGuidebook, under the Model Solar Energy Local Law tab. A workable version of this document can also be found online at the above website. It is not recommended for municipalities to use the Model Solar Energy Local Law ‘as is’; rather, it was created as a resource for advising local governments when adopting solar energy local laws.

a. This Model Solar Energy Local Law (Model Law) is not intended for adoption exactly as it is written. It is intended to be advisory only, and users should not rely upon it as legal advice. A municipality is not required to adopt this Model Law. Municipal officials are urged to seek legal advice from their attorneys before enacting a solar energy law. Municipalities must carefully consider how the Model Law language may be modified to suit local conditions, their comprehensive plan, and existing zoning and land use regulations and zoning provisions.

b. The sole siting authority for solar projects under 20 megawatts (MW) resides at the local level rather than the state level; siting authority for solar projects between 20-25 MW may be subject to decision by the applicant. One purpose of this Model Law is to inform and facilitate local efforts to expand solar energy generation in a sustainable way. This Model Law regulates the installation, operation, maintenance, and decommissioning of solar energy systems. The Model Law is intended to be an “all-inclusive” ordinance that facilitates a thorough review of all aspects of solar energy systems under typical zoning and land use regulations, including the State Environmental Quality Review Act. As they review this Model Law, municipalities are encouraged to examine their local laws and regulations and the types, size and number of solar energy projects proposed. Local governments should adopt a local law that regulates solar energy development in a way that makes the most sense for each municipality, removing, modifying, or adding provisions as appropriate.

c. In some cases, there may be multiple approaches to regulating solar energy systems based on certain criteria or local preferences. Throughout the Model Law text, “[OR]” has been selectively placed to indicate considerations for which a municipality should evaluate multiple approaches, before selecting a preferred strategy. Municipalities should choose the options which work best for their communities, in consultation with appropriate municipal officials and staff. The content provided in brackets and highlighted may be customizable or optional; depending on local circumstances, a municipality may want to include this content or choose to adopt a different standard.

d. Other zoning code definitions, uses, and regulations should be reviewed to identify any conflict with the provisions of this Model Law. For example, municipalities should amend any zoning provision that prevents an accessory use from existing on an accessory structure, which the Model Law allows. If a municipality’s zoning code defines or limits the use of the term “subordinate,” in a way that conflicts with the Model Law’s definitions, the municipality should amend the Model Law to state that it preempts the more restrictive definition. Some local zoning laws prohibit accessory structures on other accessory uses, which this Model Law allows. One solution to this and the other conflicts noted here is to amend the zoning definition for solar accessory uses to clarify that they are allowed despite restrictive definitions of “subordinate” or the prohibition of accessory uses to accessory buildings.

1. Authority

This Solar Energy Local Law is adopted pursuant to [Select one: sections 261-263 of the Town Law / sections 7-700 through 7-704 of the Village Law / sections 19 and 20 of the City Law and section 20 of the Municipal Home Rule Law] of the State of New York, which authorize the [Village/Town/City] to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the [Village/Town/City] law of New York State, “to make provision for, so far as conditions may permit, the accommodation of Solar Energy Systems and equipment and access to sunlight necessary therefor.”

Commentary: Municipalities are specifically authorized to adopt legislation to accommodate Solar Energy Systems and equipment. The Model Law Authority Section references this delegated authority. The municipal attorney should be consulted regarding this Section as well as the Model Solar Energy Law in its totality.
2. Statement of Purpose

This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of [Village/Town/City] by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
3. To increase employment and business development in the [Village/Town/City], to the extent reasonably practical, by furthering the installation of Solar Energy Systems;
4. To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and
5. To create synergy between solar and [other stated goals of the community pursuant to its Comprehensive Plan; may include urban/downtown revitalization, vacant land management, creating a walkable, healthy community, etc.].

3. Definitions

ACTIVE AGRICULTURAL LAND: Land used for a Farm Operation in accordance with Agriculture and Markets Law § 301 – uses of which include production of crops, livestock, and livestock products – within the past five years.

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time (not to include a stand-alone 12-volt car battery or an electric motor vehicle).

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

FACILITY AREA: The cumulative land area occupied during the commercial operation of the solar energy generating facility. This shall include all areas and equipment within the facility’s perimeter boundary – including the solar energy system, onsite interconnection equipment, onsite electrical energy storage equipment, and any other associated equipment – as well as any site improvements beyond the facility’s perimeter boundary such as access roads, permanent parking areas, or other permanent improvements. The facility area shall not include site improvements established for impact mitigation purposes, including but not limited to vegetative buffers and landscaping features.

FARM OPERATION: Land and on-farm buildings, equipment, facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise (in accordance with Agriculture & Markets Law § 301[11]).

GLARE: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System which is secured to the ground via a pole, ballast system, or other mounting system; is detached from any other structure; and which generates electricity for onsite or offsite consumption.

KILOWATT (kW): A unit of power equal to 1,000 watts. The nameplate capacity of residential and commercial solar energy systems may be described in terms of kW.

MEGAWATT (MW): A unit of power equal to 1,000 kW. The nameplate capacity of larger solar energy systems may be described in terms of MW.

MINERAL SOIL GROUPS 1-4 (MSG 1-4): Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed for the NYS Agricultural Assessment Program.

NAMEPLATE CAPACITY: A solar energy system’s maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).

NATIVE PERENNIAL VEGETATION: Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for Pollinators and shall not include any prohibited or regulated invasive species as determined by the NYS Department of Environmental Conservation.
ON-FARM SOLAR ENERGY SYSTEM: A Solar Energy System located on a farm which is a “farm operation” (as defined by Article 25-AA of the Agriculture and Markets Law, which may include one or multiple contiguous or non-contiguous parcels) in an agricultural district, which is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed more than 110 percent of the anticipated annual total electrical energy consumed by the farm operation.

POLLINATOR: Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

Commentary: This Model Law does not include a specific definition for Solar Energy Systems raised on canopy mounting, such as a solar parking canopy. Canopy-mounted configurations are included within the definition of Roof-Mounted Solar Energy Systems or Ground-Mounted Solar Energy Systems, depending on canopy location. Canopy-mounted systems installed on the roof of a structure are treated as Roof-Mounted Solar Energy Systems. Elevated systems not mounted on a roof are treated as Ground-Mounted Solar Energy Systems. If a municipality anticipates requiring special consideration for solar canopy systems, it could add to the Model Law specific provisions addressing these concerns or use a waiver for certain standards that may conflict with canopy-mounted systems, like height limitations.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduit, energy storage devices, or other electrical and photovoltaic equipment associated with the production and storage of electricity.
**SOLAR ENERGY SYSTEM:** The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3, or Tier 4 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:
   
   OR
   
   Ground-Mounted Solar Energy Systems with a total solar panel surface area of up to [4,000] square feet.
   4. On-Farm Solar Energy Systems

B. Tier 2 Solar Energy Systems include the following:
   
   OR
   
   Ground-Mounted Solar Energy Systems not included under Tier 1 Solar Energy Systems with a Facility Area of up to [8] acres in size and which generate up to [110] % of the electricity consumed on the site over the previous [12] months.

C. Tier 3 Solar Energy Systems include the following:
   
   OR
   
   Ground-Mounted Solar Energy Systems not included under Tier 1 or Tier 2 Solar Energy Systems with a Facility Area of up to [40] acres in size.

D. Tier 4 Solar Energy Systems are Solar Energy Systems which are not included under Tier 1, Tier 2, or Tier 3 Solar Energy Systems.

**SOLAR PANEL:** A photovoltaic device capable of collecting and converting solar energy into electricity.
Commentary: It is imperative that municipalities consider the practical land use impacts of different solar project types when establishing definitions and thresholds for Solar Energy System tiers. Where indicated in the Solar Energy Systems definition, municipalities shall elect to establish thresholds based on a systems’ Nameplate Capacity (using kW and MW) OR its physical footprint (using square feet or acres), and should be consistent in this choice throughout. These definitions will be critical to the workability of the remaining sections of any solar regulation.

As defined above, NYSERDA’s Model Solar Energy Local Law utilizes four tiers:

**Tier 1 Solar Energy Systems** include all Roof-Mounted and Building-Integrated Solar Energy Systems; Ground-Mounted Solar Energy Systems with a Nameplate Capacity up to 25 kW AC, or with a total Solar Panel surface area of up to 4,000 square feet; and On-Farm Solar Energy Systems designed to support an existing agricultural operation in the community. Permitted in all zoning districts, Tier 1 Solar Energy Systems comprise those which are likely to cause the least concern from a zoning and land use perspective. These systems will primarily support residences and small commercial operations, or may directly support agricultural operations.

Roof-Mounted and Building-Integrated Solar Energy Systems do not pose any land use or stormwater runoff impacts; as such, their inclusion under Tier 1 offers a streamlined permitting process while still ensuring adequate review and code compliance through a building permit requirement.

For Ground-Mounted Systems, the 25 kW AC Nameplate Capacity limit aligns with the Unified Solar Permit criteria; derived from the 25 kW cutoff for residential solar net metering as established by the NYS Public Service Commission (PSC). The 4,000 square foot size limit corresponds to the SEQRA Type 2 action threshold for certain accessory structures which do not require zoning changes or use variances.

Finally, On-Farm Solar Energy Systems are included under Tier 1 because, in accordance with NYS Agriculture and Markets Law Chapter 69, Article 25-AA Section 305-a and related guidance, these systems cannot be subject to unreasonably restrictive requirements such as site plan review, special use permits, or non-conforming use requirements.


**Tier 2 Solar Energy Systems** include Ground-Mounted Solar Energy Systems larger than 25 kW that primarily use the electricity generated from the system on-site. Tier 2 Ground-Mounted Solar Energy Systems have a Nameplate Capacity of up to 1 MW AC or a Facility Area of up to 8 acres, and generate no more than 110% of the electricity consumed on-site over the previous 12 months.

A municipality may elect to define Tier 2 Solar Energy Systems according to their physical size using measurements akin to those found in the zoning ordinance’s bulk and area requirements (measured in acres, square feet etc.), or based on system Nameplate Capacity. Because Tier 2 Solar Energy Systems are tied to existing development as accessory structures subordinate to the principal use on-site, these systems have smaller impacts and require less oversight.

**Tier 3 Solar Energy Systems** are larger principal uses with greater impacts that require more oversight. Tier 3 systems are those not included in Tier 1 or Tier 2 Solar Energy Systems that have a Nameplate Capacity of up to 5 MW AC or a Facility Area of up to 40 acres in size, depending on the threshold type selected by the municipality.

The 5 MW cutoff derives from the NYS Standardized Interconnection Requirements (SIR) as established by the NYS PSC. Because solar energy systems typically occupy 5-8 acres per megawatt, a 40-acre cutoff utilizes a conservative estimate of the land needed for a 5 MW project, while allowing for some flexibility in terms of planning and project design.

**Tier 4 Solar Energy Systems** are large-scale systems that are not included under Tier 1, Tier 2, or Tier 3 Solar Energy Systems.

Tier 4 Solar Energy Systems include all projects subject to the state-level siting process administered by the Office of Renewable Energy Siting (ORES); this extends to all new solar projects with a Nameplate Capacity of 25 MW or greater, as well as new solar projects between 20-25 MW which elect to seek a permit through ORES.
4. Applicability
A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in [Village/Town/City] after the effective date of this Local Law, excluding general maintenance and repair.

B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

C. Modifications to an existing Solar Energy System that increase the Facility Area by more than [5] % of the original Facility Area (exclusive of moving any fencing) shall be subject to this Local Law.

Commentary: The Applicability Section establishes the effective date for implementation of the law. In addition, it carves out an exemption for maintenance, repair of systems, and modifications to existing Solar Energy Systems with an increase in Facility Area less than 5% of the original Facility Area (exclusive of moving any fencing).

5. General Requirements
A. A Building permit shall be required for installation of all Solar Energy Systems.

B. Prior to the issuance of the building permit or final approval by the [Reviewing Board], construction and/or site plan documents must be signed and stamped by a NYS Licensed Professional Engineer or NYS Registered Architect.

C. Local land use boards are encouraged to condition their approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.

D. Issuance of permits and approvals by the [Reviewing Board] shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].


F. For Solar Energy Systems subject to site plan review, the [Village/Town/City] shall impose, and may update as appropriate, a schedule of fees to recover expenses associated with engineering, environmental, or legal services determined to be reasonably necessary in the processing of an application under this law.

6. Permitting Requirements for Tier 1 Solar Energy Systems
All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:


1. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements (exceptions may be approved by the [Code Enforcement Official]):
   a. Solar Panels on pitched roofs shall be mounted with a maximum distance of [8] inches between the roof surface the highest edge of the system.
   b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
   c. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
   d. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than [24] inches above the flat surface of the roof, whichever is higher.
2. Glare. All Solar Panels shall have anti-reflective coating(s).

3. Height. All Roof-Mounted Solar Energy Systems shall comply with the height limitations in Appendix 3.

[OR]

All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.

B. Building-Integrated Solar Energy Systems

1. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

C. Ground-Mounted Solar Energy Systems

1. Glare. All Solar Panels shall have anti-reflective coating(s).

2. Setbacks. Tier 1 Solar Energy Systems shall be subject to the setback regulations specified for the accessory structures within the underlying zoning district. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards in residential districts.

3. Height. Tier 1 Solar Energy Systems shall be subject to the height limitations specified for accessory structures within the underlying zoning district.

[OR]

Tier 1 Solar Energy Systems shall comply with the height limitations in Appendix 3.

4. Lot Size. Tier 1 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.

5. Lot coverage. Tier 1 Solar Energy Systems are exempt from the lot coverage requirements in the underlying zoning district.


a. All Tier 1 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.

b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate Solar Access.

7. Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Ground-Mounted Solar Energy Systems shall be permitted in all zoning districts as accessory structures and shall be subject to site plan approval. Tier 2 Solar Energy Systems shall adhere to the standards and requirements established for Tier 1 Ground-Mounted Systems in Section [6(C)], in addition to (or in some cases amended by) the following requirements:

A. Application & Site Plan Review Requirements. Applications for Tier 2 Solar Energy Systems, including materials for site plan review, shall include the following:

1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

2. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.

3. Nameplate Capacity of the Solar Energy System (as expressed in kW or MW).

4. Zoning district designation for the parcel(s) of land comprising the Facility Area.

5. Property lines and physical features, including roads, for the project site.

6. Adjacent land uses on contiguous parcels within a certain radius of the site boundary.

7. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees, access roads, exterior lighting, signage, fencing, landscaping, and screening vegetation or structures.
8. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Battery Energy Storage System components if applicable and should include applicable setback and other bulk and area standards.

9. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

B. Standards. Tier 2 Systems shall adhere to the following standards.

1. Lot coverage. Tier 2 Solar Energy Systems are exempt from the lot coverage requirements in the underlying zoning district.

2. Screening/Visibility. Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

3. Environmental Resources
   b. To the extent practicable, Tier 2 Solar Energy System Owners shall utilize and maintain native perennial vegetation to provide foraging habitat for pollinators in all appropriate areas within the Facility Area.
   c. Use integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance.

Commentary: The previous Sections regulate Tier 1 and Tier 2 Ground-Mounted Solar Energy Systems. Tier 1 Ground-Mounted Solar Energy Systems are relatively smaller in physical size compared to Tier 2 Ground-Mounted Solar Energy Systems. Tier 2 Ground-Mounted Solar Energy Systems produce electricity primarily for onsite consumption. Tier 1 and Tier 2 Ground-Mounted Solar Energy Systems are permitted as accessory structures in all zoning districts deemed appropriate by the local jurisdiction and do not require site plan review. Tier 1 and Tier 2 Ground-Mounted Solar Energy Systems are standalone structures and generate different concerns than roof-mounted installations. Because these system sizes are not limited to a structure’s available roof space, it is important to think about the size of the lot in relation to the allowable system size, after accounting for setbacks. The Model Law requires all Tier 1 and Tier 2 Ground-Mounted Solar Energy Systems to be subject to the setback requirements of the underlying zoning district.

The Model Law provides two options to regulate the height of Tier 1 and Tier 2 Ground-Mounted Solar Energy Systems. One way is to limit the height of Ground-Mounted Solar Energy Systems to the requirements in the underlying zoning district. Each municipality must adopt appropriate height restrictions based on local need. Alternatively, municipalities can specify a set of new height standards, as shown in Appendix 3. All height measurements should be calculated when the Solar Energy System is oriented at maximum tilt.

This Model Law includes specific screening and visibility standards for Tier 1 and Tier 2 Ground-Mounted Solar Energy Systems while limiting the enforcement to “the extent reasonably practicable” to avoid overly burdensome standards.

8. Permitting Requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are permitted through the issuance of a [special use permit] within the [XXXXXXXXXXXXXX, XXXXXXXXXX, XXXXXXXXXX] zoning districts, and subject to site plan application requirements set forth in this Section.

A. Applications for the installation of Tier 3 Solar Energy System shall be:

1. Reviewed by the [Code Enforcement/Zoning Enforcement Officer/Reviewing Board] for completeness. Applicants shall be advised within [30] days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
Commentary: Municipalities are encouraged to consider and establish a reasonable period for determining the completeness of a Solar Energy System permit application, which may be shaped by factors including:

- Availability and capacity of the Reviewing Board and/or municipal officials tasked with reviewing applications.
- Cadence of Reviewing Board meetings; if meetings are held monthly, a 30-day review period may be necessary to allow the Board to issue a completeness determination.
- Supplemental review and support services provided by a consultant or third-party.

2. Subject to a public hearing to hear all comments for and against the application. This hearing shall be in compliance with all existing public hearing requirements established under law by the [Village/Town/City].

Commentary: State law requires a public hearing and decision on special use permits but does not require notice to neighbors unless mandated under local law. If not already required by local law, localities may elect to require the following notice for proposed Tier 3 Solar Energy Systems to ensure adequate notice to adjoining landowners by adding the following provision:

“In addition to existing public notice requirements under local law, Applicants shall deliver notice by first class mail to adjoining landowners or landowners within [200] feet of the property at least [10] days prior to such a hearing. Proof of mailing shall be provided to the [Reviewing Board] at the public hearing.”

3. Referred to the [County Planning Department] pursuant to General Municipal Law § 239-m if required.

4. Upon closing of the public hearing, the [Reviewing Board] shall take action on the application within 60-days of the public hearing, which can include approval, approval with conditions, or denial. The 60-day period may be extended upon consent by both the [Reviewing Board] and applicant.

B. Application & Site Plan Review Requirements. Applications for Tier 3 Solar Energy Systems, including materials for site plan review, shall include the following:

1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

2. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.


4. Zoning district designation for the parcel(s) of land comprising the Facility Area.

5. Property lines and physical features, including roads, for the project site.

6. Map(s) of MSG 1-4 soils and Active Agriculture Lands on the parcel(s) comprising the Facility Area and adjacent parcels.

7. Adjacent land uses on contiguous parcels within a certain radius of the site boundary.

8. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees, access roads, exterior lighting, signage, fencing, landscaping, and screening vegetation or structures.

9. Erosion and sediment control and storm water management plans prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

10. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Battery Energy Storage System components if applicable and should include applicable setback and other bulk and area standards.
11. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

12. A Property Operation and Maintenance Plan that describes continuing site maintenance, anticipated dual-use, and property upkeep, such as mowing and trimming.

**Commentary:** In addition to long-term maintenance, the Operation and Maintenance Plan should present plans for dual-use on the site, including the crops that will be produced and a project-specific strategic grazing management plan of 3-to-7-year duration for the class(es) of livestock intended for the solar project. The grazing management plan should address herd size, forage availability, time of year, acreage to be grazed, weather conditions, and producer requirements. The Operation and Maintenance Plan should also place restrictions on the use of fertilizer or herbicide for long-term operation and site maintenance and should provide for scheduled upkeep of screening vegetation planted as part of the screening and visual impact mitigation plan.

13. A Decommissioning Plan [see Appendix 4] signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant. The decommissioning plan shall address the following:

   a. The time required to decommission and remove the Solar Energy System and any ancillary structures.
   
   b. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
   
   c. The cost of decommissioning and removing the Solar Energy System, as well as all necessary site remediation or restoration.
   
   d. The provision of a decommissioning security which shall adhere to the following requirements:

      1. The deposit, executions, or filing with the [Village/Town/City] Clerk of cash, bond, or other form of security reasonably acceptable to the [Village/Town/City] attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal.

      The amount of the bond or security shall be [115]% of the cost of removal and site restoration for the Tier 3 Solar Energy System, and shall be revisited every [5] years and updated as needed to reflect any changes (due to inflation or other cost changes). The decommissioning amount shall be reduced by the amount of the estimated salvage value of the Solar Energy System.

      2. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the [Village/Town/City], which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

**Commentary:** Decommissioning is the process of removing an abandoned Solar Energy System and remediating the land. When describing requirements for decommissioning Solar Energy Systems, it is possible to specifically require the removal of infrastructure, disposal of any components, and the stabilization and re-vegetation of the site. A decommissioning plan is required for Tier 3 Solar Energy Systems.

It is important to note that despite many municipalities’ choice to require a financial mechanism for decommissioning, there is no specific authority to do so as part of a land use approval for solar PV projects. Therefore, a municipality should consult the municipal attorney when evaluating financial mechanisms.

For additional resources, please refer to NYSERDA's Fact Sheet on Decommissioning Solar Panel Systems, available at nyserda.ny.gov/SolarGuidebook.
Commentary: It is important for municipalities to consider consolidating application reviews and approvals for Solar Energy Systems in one board. In some communities, the local zoning law may allocate responsibilities for special use permits and site plan approvals to different boards. Moving the application back and forth between two boards can add months and unnecessary costs to the Solar Energy System.

To avoid this, the community should determine which board should be primarily responsible for Solar Energy System approvals and consolidate special use permit and site plan approval thereby adding the following language to the Model Law: “All site plan and special use permit approvals for Solar Energy Systems shall be the responsibility of the Reviewing Board in order to avoid delays in the review of Solar Energy System applications.”

Including specific requirements for site plan approval ensures that potential problems are addressed in the initial stages of the project. Municipalities can modify the list of required information to meet local needs as appropriate.

C. Special Use Permit Standards. The [Reviewing Board] may issue a special use permit for a Tier 3 Solar Energy System only after it has found that all the following standards and conditions have been satisfied:

Commentary: Municipalities may elect to include waiver provisions that provide flexibility for the Reviewing Board, in its discretion, to waive certain requirements for Solar Energy Systems which: (1) are harmonious with existing land uses where proposed, and/or (2) based on system size or other considerations, need not adhere to the law’s special use permit and site plan regulations. In some cases, the waiver may be partial, allowing the Reviewing Board to require a proposed Solar Energy System to comply with individual requirements in the law or to remove certain special use permit standards, such as required fencing, for smaller projects or other situations where the community deems these standards unnecessary.

1. Underground Requirements. All utility lines located outside of the Facility Area shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

2. Vehicular Paths. Vehicular paths within the Facility Area shall be designed in compliance with Uniform Code requirements to ensure emergency access, while minimizing the extent of impervious materials and soil compaction.

3. Signage.
   a. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer’s name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than [8] square feet.
   b. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

4. Glare. All Solar Panels shall have anti-reflective coating(s).

5. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

6. Multiple lots. At the discretion of the [Reviewing Board], where a Tier 3 Solar Energy System’s Facility Area comprises multiple lots (regardless of ownership by an individual or multiple participating landowners), the combined lots may be treated a single lot for the purposes of applying specific standards and requirements, including but not limited to [lot size, setback] requirements.
Commentary: Tier 3 and Tier 4 Solar Energy Systems may include multiple lots within the Facility Area. To avoid project fragmentation, and to encourage responsible project density, the Reviewing Board may elect to treat adjacent participating lots as a single lot when applying select bulk and area standards, such as setbacks or lot size requirements. This approach may help minimize visual and cumulative land-use impacts by consolidating a project's footprint, minimizing project fragmentation throughout the community, and preventing accidental marginalization of lands in the Facility Area.

7. Lot size. The property on which the Tier 3 Solar Energy System is placed shall meet the lot size requirements of the underlying zoning district.

[OR]
The property on which the Tier 3 Solar Energy System is placed shall meet the lot size requirements in Appendix 1.

8. Setbacks. The Tier 3 Solar Energy Systems shall comply with the setback requirements of the underlying zoning district for principal structures. Fencing, collection lines, access roads and landscaping may occur within the setback.

[OR]
The Tier 3 Solar Energy Systems shall meet the parcel line setback requirements in Appendix 2, Table 2.1. Fencing, collection lines, access roads and landscaping may occur within the setback.

9. Height. The Tier 3 Solar Energy Systems shall comply with the building height limitations for principal structures of the underlying zoning district.

[OR]
The Tier 3 Solar Energy Systems shall comply with the height limitations in Appendix 3 depending on the underlying zoning district.

a. This height requirement can be waived by the [Reviewing Board] if the panels are being raised to accommodate continued or new agricultural purposes.
Commentary: Since Ground-Mounted Solar Energy Systems generally do not include much impervious surface and since lot coverage requirements are designed, in large part, to reduce impervious surfaces and associated stormwater runoff, this Model Law exempts Ground-Mounted Solar Energy Systems from lot coverage requirements. Ground-Mounted Solar Energy Systems are distinct from other uses, such as buildings or sheds, because stormwater generally will continue to infiltrate the uncompacted and vegetated ground beneath them. The setback, environmental, and agricultural requirements contained in the Model Law address issues related to stormwater runoff from Ground-Mounted Solar Energy Systems, and both the construction and operation of large Ground-Mounted Solar Energy Systems will be subject to applicable State requirements around erosion, sediment control and stormwater management requirements.

Municipalities which prefer not to waive lot coverage requirements for Ground-Mounted Solar Energy Systems can adopt more flexible lot coverage requirements that allow the Reviewing Board to limit issues related to fragmentation and the need to utilize large parcels of land for projects. The model language below requires that the Solar Energy System not exceed the maximum lot coverage requirement of the underlying zoning district but calculates lot coverage for a Ground-Mounted Solar Energy System by its actual impervious footprint, which results in a smaller measurement than the square footage of the Solar Panels.

10. Lot coverage. Lot coverage of the Solar Energy System, as defined below, shall not exceed the maximum lot coverage requirement of the underlying zoning district. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements:
   a. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
   b. All mechanical equipment of the Solar Energy System, including any pad mounted structure for Battery Energy Storage System components, switchboards, or transformers.
   c. Paved access roads servicing the Solar Energy System.

Alternatively, the requirement below measures a system’s lot coverage by Solar Panel square footage and requires that the system not exceed a maximum lot coverage requirement established specifically for Ground-Mounted Solar Energy Systems.

10. Lot coverage. The Tier 3 Solar Energy System shall not exceed [60%] of the lot where it is installed. The surface area covered by Solar Panels shall be included in total lot coverage.

10. Lot coverage. Tier 3 Solar Energy Systems are exempt from the lot coverage requirements in the underlying zoning district.

11. Fencing Requirements. All mechanical equipment, including any structure for Battery Energy Storage System components, shall be enclosed by a [7-foot-high] fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

   a. Solar Energy Systems smaller than [10] acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
   b. Solar Energy Systems larger than [10] acres shall be required to:
      1. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, [shall/may] be required to submitted by the applicant.
      2. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.
i. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of [1] evergreen tree, at least [6] feet high at time of planning, plus [2] supplemental shrubs at the reasonable discretion of the [Reviewing Board], all planted within each [10] linear feet of the Solar Energy System. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species should be provided by the [Village/Town/city].

[OR]

The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system, following the applicable rules and standards established by the [Village/Town/County].

ii. The [Reviewing Board] may elect to waive certain screening and landscaping requirements in select locations based on an applicant’s demonstration of non-impact or impact mitigation on adjacent parcels.

Commentary: In general, municipalities should think through how helpful SEQRA can be in mitigating adverse impacts of any proposed system approved through a special use permit under this Section. When determining the appropriate SEQRA classification for a solar energy facility, municipalities shall consider a variety of tangible impacts which may be associated with the project, including the cumulative acreage of land disturbed by grading, road construction, racking system installation, and other activities.

For Tier 3 Solar Energy Systems which occupy fewer than 10 acres (considered Unlisted Actions in SEQR, except for systems in agricultural districts with a solar-panel surface area larger than 2.5 acres), this Model Law limits the enforcement of screening and visibility standards to “the extent reasonably practicable” to avoid overly burdensome standards.

For Tier 3 Solar Energy Systems which occupy greater than 10 acres (considered Type I Actions in SEQR), a visual impact assessment may be required by the Reviewing Board. If so, the visual impact assessment prepared for compliance with SEQRA could also be used to analyze visual impacts on public roadways and adjacent properties in compliance with requirements under the Model Law.

For additional resources, please refer to NY-Sun’s “State Environmental Quality Review (SEQRA) for Solar,” available at nysenda.ny.gov/SolarGuidebook.

13. Environmental Resources


b. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing Native Perennial Vegetation and foraging habitat beneficial to game birds, songbirds, and Pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes and seed all appropriate areas within the Facility Area. Any project which is designed to incorporate agricultural or farm-related activities or uses within the Facility Area may be excluded from this requirement based on the amount of space actually occupied by the agricultural use(s). This exclusion will only be allowed based on the determination that these lands are being used for actual agricultural uses.

c. Use integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance.
**Commentary:** Pollinators (birds, bats, bees, butterflies, moths, beetles, and multiple other species of insects) are critical to agricultural yield in the U.S. Some solar facilities are starting to use seed mixes of native grasses and Pollinator friendly flowering plants as ground cover in solar farms. By establishing native Pollinator habitats on solar farms, it is possible to reconcile the conflict between solar farms and agricultural land use. Below are multiple recommended approaches that can be used for creating Pollinator habitat on solar farms:

- Plant short-growing, low-maintenance, native seed mix underneath and around the panels;
- Plant a diverse Pollinator seed mix in between the rows of panels;
- Plant buffers with vegetation that benefit Pollinators and early successional species; Plant native shrubs along the property boundary;
- Specify a minimum number of species of native flowers (encouraged to include species for each bloom period) and native grass species.

14. Agricultural Resources. Tier 3 Solar Energy Systems for which the Facility Area includes lands consisting of MSG 1-4 shall adhere to the following requirements:

a. Tier 3 Solar Energy System components, equipment, and associated impervious surfaces shall occupy no more than 50% of the area of MSG 1-4 within the Facility Area.

   1. A Tier 3 Solar Energy System may exceed the 50% MSG 1-4 coverage threshold if it incorporates an onsite activity or program which provides for the use of the land as a Farm Operation. Exceedance beyond the 50% threshold will only be allowed based on the Reviewing Board’s determination that the land is being used for a Farm Operation.

   2. Subject to discretion of the Reviewing Board, if the landowner demonstrates that – notwithstanding the classification as MSG 1-4 – the land cannot be profitably employed due to excessive wetness, rocky conditions or slopes, the land may be excluded from the calculation required by this section.

b. To the maximum extent practicable, Tier 3 Solar Energy Systems located on MSG 1-4 shall be constructed, monitored, and decommissioned in accordance with the the NYS Department of Agriculture and Markets’ “Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands.”
**Commentary:** For more information about solar and agriculture, including dual-use approaches and relevant NYS programs, please refer to the ‘Solar Installations on Agricultural Lands’ section of the Solar Guidebook, available at: [www.nyserda.ny.gov/SolarGuidebook](http://www.nyserda.ny.gov/SolarGuidebook).

MSG 1-4 include the highest quality soils in New York based on soil productivity and capability, as identified by the NYS Department of Agriculture and Markets. The agricultural protection standards and requirements included in this Model Law are designed to align with this soil categorization methodology, which is already utilized by NYS agencies including the NYS Department of Agriculture and Markets, NYSERDA, ORES, and the NYS Department of Taxation and Finance.

Other optional approaches for addressing agriculture include:

- Adding a provision that requires any Tier 3 Solar Energy System located on Active Agricultural Land to not exceed 75% of the area of Active Agricultural Land within the Facility Area.

- Utilizing “Prime Farmland” and “Farmland of Statewide Importance” as the basis for agricultural protection standards included under local regulations, rather than MSG 1-4.


- Adding a provision that permits the Reviewing Board to waive or modify certain bulk and area standards that result in unintended consequences. Waiving those standards better protects agriculture and promotes continued agricultural use and alternative designs that protect more land.

- In drafting and evaluating solar regulations, coordinate with local/county/regional agricultural preservation board(s) as appropriate to provide an opportunity for ideation and feedback regarding agricultural land impacts. As with other external referral processes, consider establishing clear expectations and timelines to avoid delays.

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D. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

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All Tier 4 Solar Energy Systems are permitted through the issuance of a [special use permit] within the [XXXXXXXXXXXXXX, XXXXXXXXXXX, XXXXXXXXXXX] zoning districts, and are subject to the site plan and special use permit application requirements established for Tier 3 Solar Energy Systems in Section [8], in addition to (or in some cases amended by) the following requirements:

A. Applications for Tier 4 Solar Energy Systems shall:

1. Be reviewed by the [Code Enforcement/Zoning Enforcement Officer/Reviewing Board] for completeness. Applicants shall be advised within 60 days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

B. Pre-Application Meeting.

At least [60] days prior to the submission of an application, the Applicant shall conduct a pre-application meeting with the [Reviewing Board OR Village/Town/City staff] to ensure all parties have clear expectations regarding any [Village/Town/City] requirements applicable to the proposed Solar Energy System. A written request for this purpose shall be sent to the [Reviewing Board OR highest-ranking official of the Village/Town/City]. Submission and review of the application shall not be delayed based on the failure of the [Reviewing Board OR highest-ranking official of the Village/Town/City] to respond in a timely manner to a properly-filed meeting request.
At the pre-application meeting, the Applicant must provide (1) a brief description of the proposed facility and its environmental setting, (2) a map of the proposed facility showing project components, (3) the proposed facility's anticipated impacts, (4) a designated contact person with telephone number, email address, and mailing address from whom information will be available going-forward basis, and (5) an anticipated application submission date.

Commentary: The pre-application meeting requirement is intended to align with procedural requirements applicable to major renewable energy facilities, as permitted by ORES; this requirement is outlined in 19 NYCRR § 900-1.3 and available at https://ores.ny.gov/system/files/documents/2021/03/chapter-xviii-title-19-of-nycrr-part-900-subparts-900-1-through-900-15.pdf.

C. Community Engagement Plan.

Applications for a Tier 4 Solar Energy System shall include a Community Engagement Plan detailing the applicant's proposed plans and strategies for ensuring adequate public awareness and encouraging community participation. Applicants are highly encouraged to discuss the contents and details proposed in this plan with the [Reviewing Board OR local officials] prior to the submission of a formal application.


Consistent with those criteria, municipalities can require the Plans be publicly posted and incorporate the following criteria into Community Engagement Plan requirements for Tier 4 Solar Energy Systems:

• Details of outreach strategies and activities that will be used to engage stakeholders and interested parties.
• Planned frequency of public events and strategies to ensure that events are widely attended by a representative cross section of community residents.
• Details of the direct benefits to the community.
• Details on past/planned engagement regarding payments in lieu of taxes agreements or host community agreements.
• Describe local interests and concerns, including identifying plans to thoughtfully build support for and respectfully responding to any opposition.
• Identify strategies the Applicant will use to mitigate concerns raised by the public.
• Method for soliciting feedback and input from the public and the process for sharing feedback and responses publicly.

D. Special Use Permit Standards

1. Setbacks: Tier 4 Solar Energy Systems shall meet all applicable parcel line and other setback requirements as outlined in Appendix 2, Table 2.2. Fencing, collection lines, access roads and landscaping may occur within the setback.

2. Agricultural Resources: Tier 4 Solar Energy Systems for which the Facility Area includes Active Agricultural Lands shall adhere to the following requirements:

   a. Tier 4 Solar Energy System components, equipment, and associated impervious surfaces shall occupy no more than [50%] of the Active Agricultural Lands within the Facility Area.

      i. A Tier 4 Solar Energy System may exceed the [50%] Active Agricultural Land threshold if it incorporates an onsite activity or program which provides for the use of the land as a Farm Operation. Exceedance beyond the [50%] threshold will only be allowed based on the [Reviewing Board]’s determination that the land is being used for a Farm Operation.
b. To the maximum extent practicable, Tier 4 Solar Energy Systems located on Active Agricultural Lands shall be constructed, monitored, and decommissioned in accordance with the NYS Department of Agriculture and Markets’ “Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands.”

10. Safety
A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.

B. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

C. If a Battery Energy Storage System is included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the [Village/Town/City] and any applicable federal, state, or county laws or regulations.

D. Where deemed necessary by the [Reviewing Board], the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location subject to approval by the [Fire Chief of Village/Town/City].

11. Permit Timeframe and Abandonment
A. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of [36] months, provided that [a building permit is issued for construction OR construction is commenced]. In the event construction is not completed in accordance with the final site plan — as may have been amended and approved — as required by the [Reviewing Board], within [36] months, the applicant may request to extend the time to complete construction for [12] months. Approval of a request to extend the time to complete construction shall not be unreasonably withheld by the [Village/Town/City]. If the owner and/or operator fails to perform substantial construction within [48] months, the approvals shall expire.

B. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for [12] months, the [Village/Town/City] may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within [12] months of notification.

C. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the [Village/Town/City] may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

**Commentary:** Abandonment, as it applies to Solar Energy Systems, requires that the Solar Energy System be removed after a specified amount of time of inactivity. A municipality can establish a timeframe for the removal of a Solar Energy System based on aesthetics, system size, location, and system complexity. Municipalities, in their codes, can designate the amount of time after which a Solar Energy System is considered abandoned.

If provisions of financial surety to cover the cost of removal are not required, municipalities could use other remedies, such as placing a tax lien on the property if the owner and/or operator fail(s) to comply with decommissioning requirements.

12. Enforcement
Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of [Village/Town/City].

**Commentary:** This Section provides that any violation of the Solar Energy Law will result in the same assessment of civil and criminal penalties already laid out in the existing enforcement provision(s) of the municipality’s zoning code.

If a municipality is particularly concerned about enforcement and adherence to permit requirements, the municipality should provide solar specific training for enforcement officers.
13. Severability
The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the
aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall
not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase,
which shall remain in full force and effect.

2.1 Appendix 1: Lot Size Requirements
The following table displays the size requirements of the lot for Ground-Mounted Solar Energy Systems to be permitted.

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Tier 3 &amp; 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Low Density</td>
<td>≥ 2 acres</td>
</tr>
<tr>
<td>Residential High Density</td>
<td>—</td>
</tr>
<tr>
<td>Commercial / Business</td>
<td>≥ 5 acres</td>
</tr>
<tr>
<td>Light Industrial</td>
<td>N/A</td>
</tr>
<tr>
<td>Heavy Industrial</td>
<td>N/A</td>
</tr>
<tr>
<td>Agricultural / Residential</td>
<td>≥ 5 acres</td>
</tr>
</tbody>
</table>

Key:
—: Not Allowed
N/A: Not Applicable

2.2 Appendix 2: Setback Requirements
The following table provides parcel line setback requirements for Ground-Mounted Solar Energy Systems. Fencing, access
routes and landscaping may occur within the setback.

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Tier 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Front</td>
</tr>
<tr>
<td>Residential Low Density</td>
<td>100’</td>
</tr>
<tr>
<td>Residential High Density</td>
<td>—</td>
</tr>
<tr>
<td>Commercial / Business</td>
<td>30’</td>
</tr>
<tr>
<td>Light Industrial</td>
<td>30’</td>
</tr>
<tr>
<td>Heavy Industrial</td>
<td>30’</td>
</tr>
<tr>
<td>Agricultural / Residential</td>
<td>30’</td>
</tr>
</tbody>
</table>

Key:
—: Not Allowed
Table 2.2: Parcel Line and Other Setback Requirements for Tier 4 Solar Energy Systems

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Front</th>
<th>Side</th>
<th>Rear</th>
<th>Non-Participating Occupied Residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Low Density</td>
<td>100’</td>
<td>100’</td>
<td>100’</td>
<td>250’</td>
</tr>
<tr>
<td>Residential High Density</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Commercial / Business</td>
<td>50’</td>
<td>50’</td>
<td>50’</td>
<td>250’</td>
</tr>
<tr>
<td>Light Industrial</td>
<td>50’</td>
<td>50’</td>
<td>50’</td>
<td>250’</td>
</tr>
<tr>
<td>Heavy Industrial</td>
<td>50’</td>
<td>50’</td>
<td>50’</td>
<td>250’</td>
</tr>
<tr>
<td>Agricultural / Residential</td>
<td>50’</td>
<td>50’</td>
<td>50’</td>
<td>250’</td>
</tr>
</tbody>
</table>

**Key:**

—: Not Allowed

2.3 Appendix 3: Height Requirements

The following table displays height requirements for each type of Solar Energy Systems. The height of systems will be measured from the highest natural grade below each Solar Panel.

Table 3.1: Height Requirements

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Tier 1 Roof-Mounted</th>
<th>Tier 1 &amp; 2 Ground-Mounted</th>
<th>Tier 3 &amp; 4 Ground-Mounted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Low Density</td>
<td>2’ above roof</td>
<td>10’</td>
<td>15’</td>
</tr>
<tr>
<td>Residential High Density</td>
<td>2’ above roof</td>
<td>10’</td>
<td>—</td>
</tr>
<tr>
<td>Commercial / Business</td>
<td>4’ above roof</td>
<td>15’</td>
<td>20’</td>
</tr>
<tr>
<td>Light Industrial</td>
<td>4’ above roof</td>
<td>15’</td>
<td>20’</td>
</tr>
<tr>
<td>Heavy Industrial</td>
<td>4’ above roof</td>
<td>15’</td>
<td>20’</td>
</tr>
<tr>
<td>Agricultural / Residential</td>
<td>2’ above roof</td>
<td>15’</td>
<td>20’</td>
</tr>
</tbody>
</table>

**Key:**

—: Not Allowed
2.4 Appendix 4: Example Decommissioning Plan

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at: [Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by [Town/Village/City], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the “Facility”).

System decommissioning shall be required as a result of any of the following conditions:

1. The land lease – if any – ends, unless the project owner has acquired the land.
3. The Solar Energy System is damaged and will not be repaired or replaced by [Solar Developer Owner].

If any of the above conditions are met, and upon notification or instruction by the [Village/Town/City], [Solar Developer Name] shall implement this decommissioning plan. System decommissioning and removal, as well as all necessary site restoration or remediation activities, shall be completed within [12] months.

The owner of the Facility, as provided for in its lease with the landowner, and in accordance with the requirements of the [Village/Town/City] zoning law, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which shall include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations located less than 36-inches below the soil surface, and/or less than 48-inches below the soil surface in areas consisting of [Mineral Soil Groups (MSG) 1-4 and/or Active Agricultural Lands].
2. For projects located on areas consisting of [MSG 1-4 and/or Active Agricultural Lands], removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations in accordance with the decommissioning requirements contained in the NYS Department of Agriculture and Markets’ “Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands.”
3. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
4. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

An appendix is included in this plan to provide a project schedule detailing a breakdown of tasks required for the decommissioning removal of the system, including:

1. Time required to decommission and remove the system and any ancillary structures.
2. Time required to repair any damage caused to the property by the installation and removal of the system.

The cost of system decommissioning and removal, as well as all necessary site remediation and restoration activities, is estimated to be $[XXX] as of the date and time this application is filed. A decommissioning security [has been OR will be] executed in the amount of [115]% of the cost of system decommissioning, removal, and site restoration.

This cost estimate and decommissioning surety will be revisited every [5] years and updated as needed to account for inflation or other cost changes.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: ___________________________________________ Date: ___________________________
Resources from the NYC Mayor’s Office of Climate and Environmental Justice

New York City Citywide CLCPA Inventory (2005–2021) (2023),

PlaNYC: Getting Sustainability Done (2023),


The NYC Climate Resiliency Design Guidelines v4.1 (2022),

Understanding and Alleviating Energy Cost Burden in New York City (2019),

Resources from the Village of Hastings-on-Hudson, NY

Climate Smart Communities Annual Progress Report 2022,

Geothermal and Heat Pump Feasibility Assessment (Jul. 18, 2023),

Selected Scholarship


Governor Hochul Announces FY 2024 Budget Investments in Energy Affordability, Sustainable Buildings, and Clean Energy

Advancing Building Decarbonization with Zero Emission New Construction

$400 Million Investment to Promote Energy Affordability

Advances Affordable Cap-and-Invest Program to Accelerate Climate Action and Create Jobs

New York Power Authority to Expand Renewable Generation Portfolio to Support State's Renewable Targets

$400 Million Environmental Protection Fund, $500 Million for Clean Water Infrastructure, and $200 Million for State Parks

Governor Kathy Hochul today announced investments in sustainable buildings, energy affordability, and clean energy development in the FY 2024 Budget. In one of the most extensive climate packages in recent history, the Budget makes transformative investments and includes groundbreaking legislation building on more than $30 billion committed to climate action.

"New York is committed to building a clean economy and protecting our environment for future generations," Governor Hochul said. "This Budget shows an unprecedented commitment to green infrastructure, reducing emissions from the building sector, and protecting clean water. I thank my colleagues in the Legislature for their collaboration on a transformational Budget that represents one of the most ambitious packages our state has advanced as we continue the fight against climate change."

**Building Decarbonization**

In New York State, buildings account for more than 30 percent of state greenhouse gas emissions. The final adopted Budget makes New York the first state in the nation to advance comprehensive legislation for constructing modern zero-emission new homes and buildings that will protect our families and our residents, while putting New York on trajectory to a cleaner, healthier future.
The Budget includes requirements for advancing zero emission construction in new buildings seven stories or lower, except large commercial and industrial buildings, by December 31, 2025, and all other new buildings by December 31, 2028. The Budget also requires exemptions such as emergency backup and standby power, manufacturing facilities, commercial food establishments, laboratories, car washes, laundromats, hospitals, crematoriums, agricultural buildings, and critical infrastructure.

Additionally, New York State is leading by example by calling on the New York Power Authority (NYPAP) to complete decarbonization action plans for 15 of the highest emitting state facilities. The action plans will accelerate our progress towards a cleaner building sector, lead to the creation of high-quality jobs at future decarbonization projects, including thermal energy networks, and move the State closer to reaching our climate goals.

**Investing in Affordable Energy**

As New Yorkers face rising costs, Governor Hochul has prioritized energy affordability as we transition to a clean energy future. The Budget includes $400 million to provide relief to New Yorkers experiencing high electric bills as well as lower energy burdens through electrifications and retrofits.

$200 million will provide relief to New Yorkers who are experiencing high electric bills. The Department of Public Service will provide a monthly discount to more than 800,000 electric utility customers who are making less than the state median income and have not been eligible for the State's utility discount program. $200 million will also be allocated for NYSERDA’s EmPower Plus home retrofits program, which will help 20,000 low-income families retrofit their homes by adding insulation, installing energy efficient appliances, and switching to clean energy.

**Cap-and-Invest**

The FY 2024 Budget advances Governor Hochul’s priority to create an affordable, equitable and effective Cap-and-Invest program that accelerates climate action, creates high-quality jobs, and protects and invests in disadvantaged communities. The Budget creates the financial foundation required to support an economy-wide Cap-and-Invest program, which was endorsed by the Climate Action Council as the most environmentally effective and economically feasible way to reach New York's ambitious climate requirements established by the 2019 Climate Act.

Governor Hochul fought to secure the creation of the Consumer Climate Action Account, which ensures one-third of future proceeds will be provided to New Yorkers in a critical step toward protecting affordability. The Budget also creates a Climate Affordability Study process to provide recommendations on the most impactful use of funds to protect New Yorkers. In addition, the Budget establishes a new Climate Investment Account which will direct two-thirds of future proceeds to support the transition to a less carbon-intensive economy. The Climate Investment Account will support clean energy programs and policies, emission reduction measures, and focus on disadvantaged communities, accompanied by strong labor standards to ensure the creation of high-quality jobs.
New York Power Authority to Build Renewables

To reach the Climate Act goal of 100 percent zero-emission electricity by 2040, Governor Hochul is requiring an all-hands on deck approach to building clean energy. Governor Hochul and state agencies have already made bold steps to ensure the development of clean energy and transmission infrastructure. Notably, NYPA has supported the State in building transmission lines to bring clean, reliable energy to where it is needed most, including by partnering extensively with the private sector. Building on its success with transmission development, the Budget enables NYPA to expand its renewable portfolio by working on its own and with private sector renewable energy developers to build new renewable generation to support the State’s clean energy goals and create high-quality jobs backed by strong labor standards, while reducing costs for consumers.

It also directs NYPA to provide a plan for the phase out of its "peaker" plants by 2030, to contribute up to $25 million annually to the Department of Labor to support a Just Transition for energy workers, and to establish the "Renewable Energy Access and Community Help Program" (REACH), allowing customers in disadvantaged communities to benefit from renewables by receiving bill credits from renewable energy projects that are owned, developed, or contracted for by NYPA to support REACH.

Environmental Protection Fund

In addition to investments from the landmark Environmental Bond Act passed by voters in 2022, the FY 2024 Budget includes $400 million for the Environmental Protection Fund (EPF), sustaining this historic investment level from the FY 2023 Budget. The EPF supports climate change mitigation, protects water sources, advances conservation efforts, and provides recreational opportunities for New Yorkers.

Clean Water Funding

The Budget includes $500 million in clean water funding, bringing New York’s total clean water infrastructure investment to $5 billion since 2017.

Improving Water Infrastructure in Suffolk County

Much of Suffolk County is burdened with failing septic systems and cesspools. The Budget authorizes Suffolk County to put a ballot referendum to the voters to implement a long-term plan to create a recurring funding source for wastewater infrastructure needs. This necessary investment in infrastructure will address water quality needs by incentivizing homeowners and businesses to upgrade failing or inadequate septic systems and providing an opportunity to invest in new sewer systems.

Office of Parks, Recreation and Historic Preservation

The Budget commits $200 million in capital funding to continue the ongoing transformation of New York’s flagship parks, support critical infrastructure projects, and help make our state Parks energy-
independent and meet the goal of powering park facilities with renewable energy by 2030.

**Investing in our Workforce to Implement the Environmental Bond Act**

The landmark Clean Water, Clean Air and Green Jobs Environmental Bond Act is the largest environmental bond in state history and the first in New York since 1996. The Bond Act will provide $4.2 billion to support new and expanded programs across the state to protect drinking water sources, reduce pollution, and protect communities and natural resources from the impacts of climate change. To support the implementation of this historic initiative, the Budget includes 265 additional staff for state agencies.
FY 2024 Enacted Budget Overview


FY 2024 Mid-Year Update

- [Mid-Year Update to the FY 2024 Financial Plan](PDF)

FY 2024 Financial Plan – First Quarterly Update

- [First Quarterly Update to the FY 2024 Financial Plan](PDF)

FY 2024 Enacted Budget Financial Plan

- [FY 2024 Enacted Budget Financial Plan](PDF)

FY 2024 Enacted Budget Capital Program and Financing Plan

- [FY 2024 Enacted Budget Capital Program and Financing Plan](PDF)

FY 2024 Enacted Budget Press Release

- [Governor Hochul Announces Highlights of Historic FY 2024 Budget]

FY 2024 Enacted Budget – Localities and School Districts

- [2023-24 Enacted Budget School Aid Runs](PDF)
- [FY 2024 Aid and Incentives for Cities (sorted by County)](PDF)
- [FY 2024 Aid and Incentives for Towns (sorted by County)](PDF)
- [FY 2024 Aid and Incentives for Villages (sorted by County)](PDF)
- [FY 2024 Aid and Incentives for Municipalities – Payment Schedule](PDF)
FY 2024 Enacted Budget Bills

The Enacted Budget bills are found on the Legislative Information Site (JavaScript required).

To view the text of a bill, enter the corresponding Bill Number listed below (e.g., S400D for the Senate State Operations Appropriations bill, S4000-D), and the Session year (2023), select the “Text” checkbox at the top of the page and click the “Search” button. The Budget menu link can also be used to reach the bills.

FY 2024 Appropriation Bills

- State Operations (S4000-D/A3000-D)
- Legislature and Judiciary (S4001-B/A3001-A)
- Debt Service (S4002/A3002)
- Aid to Localities (S4003-D/A3003-D)
- Capital Projects (S4004-D/A3004-D)

FY 2024 Article VII Bills

- Public Protection and General Government (PPGG) (S4005-C/A3005-C)
- Education, Labor and Family Assistance (ELFA) (S4006-C/A3006-C)
- Health and Mental Hygiene (HMH) (S4007-C/A3007-C)
- Transportation, Economic Development and Environmental Conservation (TED) (S4008-C/A3008-C)
- Revenue (S4009-C/A3009-C)
IN SENATE -- Introduced by Sens. KAMINSKY, HOYLMAN, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MARTINEZ, MAY, MAYER, METZGER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, STEWART-COUSINS, THOMAS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. ENGLEBRIGHT, LIFTON, FAHY, ORTIZ, CAHILL, WALKER, CARROLL, L. ROSENTHAL, THIELE, JAFFEE, SIMON, OTIS, DINOWITZ, WILLIAMS, ROZIC, ABINANTI, MOSLEY, BARRETT, STECK, GALEF, GOTTFRIED, LUPARDO, PHEFFER AMATO, DE LA ROSA, JEAN-PIERRE, COLTON, CUSICK, PEOPLES-STOKES, SEAWRIGHT, PICKARD, WEPRIN, SIMOTAS, GLICK, FERNANDEZ, D'URSO, O'DONNELL, GRIFFIN, REYES, BURKE, SOLAGES, ROMEO, STIRPE, MAGNARELLI, EPSTEIN, TAYLOR, FALL, CRUZ, STERN, SANTABARBARA, BRONSON, BARNWELL, DAVILA, HEVESI, NIOU, HUNTER, M. G. MILLER, BENEDETTO, RODRIGUEZ, QUART, WRIGHT, HYNDMAN, CRESPO, FRONTUS, RYAN, SAYEGH, BARRON, PRETLOW, GUNThER, RICHARDSON, RAYNOR, KIM, McMAHON, DICKENS, JACOBSON, WEINSTEIN -- Multi-Sponsored by -- M. of A. DenDekker, LENTOL, NOLAN, PAULIN, RAMOS -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the environmental conservation law, the public service law, the public authorities law, the labor law and the community risk and resiliency act, in relation to establishing the New York state climate leadership and community protection act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and declaration. The legislature hereby enacts the "New York state climate leadership and community protection act" and finds and declares that:

EXPLANATION—Matter in italics (underscored) is new; matter in brackets [—] is old law to be omitted.
1. Climate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York. The adverse impacts of climate change include:

   a. an increase in the severity and frequency of extreme weather events, such as storms, flooding, and heat waves, which can cause direct injury or death, property damage, and ecological damage (e.g., through the release of hazardous substances into the environment);

   b. rising sea levels, which exacerbate damage from storm surges and flooding, contribute to coastal erosion and saltwater intrusion, and inundate low-lying areas, leading to the displacement of or damage to coastal habitat, property, and infrastructure;

   c. a decline in freshwater and saltwater fish populations;

   d. increased average temperatures, which increase the demand for air conditioning and refrigeration among residents and businesses;

   e. exacerbation of air pollution; and

   f. an increase in the incidences of infectious diseases, asthma attacks, heart attacks, and other negative health outcomes. These impacts are having a detrimental effect on some of New York's largest industries, including agriculture, commercial shipping, forestry, tourism, and recreational and commercial fishing. These impacts also place additional strain on the physical infrastructure that delivers critical services to the citizens of New York, including the state's energy, transportation, stormwater, and wastewater infrastructure.

2. a. The severity of current climate change and the threat of additional and more severe change will be affected by the actions undertaken by New York and other jurisdictions to reduce greenhouse gas emissions. According to the U.S. Global Change Research Program (USGCRP) and the Intergovernmental Panel on Climate Change (IPCC), substantial reductions in greenhouse gas emissions will be required by mid-century in order to limit global warming to no more than 2°C and ideally 1.5°C, and thus minimize the risk of severe impacts from climate change. Specifically, industrialized countries must reduce their greenhouse gas emissions by at least 80% below 1990 levels by 2050 in order to stabilize carbon dioxide equivalent concentrations at 450 parts per million—the level required to stay within the 2°C target.

   b. On December 12, 2015, one hundred ninety-five countries at the 21st Conference of the parties of the United Nations Framework Convention on Climate Change adopted an agreement addressing greenhouse gas emissions mitigation, adaptation, and finance starting in the year 2020, known as the Paris Agreement. The Paris Agreement was adopted on November 4, 2016, and is the largest concerted global effort to combat climate change to date.

3. Action undertaken by New York to reduce greenhouse emissions will have an impact on global greenhouse gas emissions and the rate of climate change. In addition, such action will encourage other jurisdictions to implement complementary greenhouse gas reduction strategies and provide an example of how such strategies can be implemented. It will also advance the development of green technologies and sustainable practices within the private sector, which can have far-reaching impacts such as a reduction in the cost of renewable energy components, and the creation of jobs and tax revenues in New York.

4. It shall therefore be a goal of the state of New York to reduce greenhouse gas emissions from all anthropogenic sources 100% over 1990 levels by the year 2050, with an incremental target of at least a 40 percent reduction in climate pollution by the year 2030, in line with
USGCRP and IPCC projections of what is necessary to avoid the most severe impacts of climate change.

5. Although substantial emissions reductions are necessary to avoid the most severe impacts of climate change, complementary adaptation measures will also be needed to address those risks that cannot be avoided. Some of the impacts of climate change are already observable in New York state and the northeastern United States. Annual average temperatures are on the rise, winter snow cover is decreasing, heat waves and precipitation are intensifying, and sea levels along New York's coastline are approximately one foot higher than they were in 1900. New York has also experienced an increasing number of extreme and unusual weather events, like Hurricanes Irene and Lee and the unprecedented Superstorm Sandy in 2012, which caused at least 53 deaths and $32 billion in damage in New York state.

6. New York should therefore minimize the risks associated with climate change through a combination of measures to reduce statewide greenhouse gas emissions and improve the resiliency of the state with respect to the impacts and risks of climate change that cannot be avoided.

7. Climate change especially heightens the vulnerability of disadvantaged communities, which bear environmental and socioeconomic burdens as well as legacies of racial and ethnic discrimination. Actions undertaken by New York state to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities, control potential regressive impacts of future climate change mitigation and adaptation policies on these communities, and prioritize the allocation of public investments in these areas.

8. Creating good jobs and a thriving economy is a core concern of New York state. Shaping the ongoing transition in our energy sector to ensure that it creates good jobs and protects workers and communities that may lose employment in the current transition must be key concerns of our climate policy. Setting clear standards for job quality and training standards encourages not only high-quality work but positive economic impacts.

9. Workers are at the front lines of climate change. Construction workers and building service workers were some of the first workers dedicated to cleaning up damage inflicted by recent storms. These workers were often operating in unsafe and toxic environments, cleaning up mold, and working in unstable buildings. In order to protect the health and welfare of these workers, it is in the interest of the state of New York to establish safe and healthy working conditions and proper training for workers involved in climate change related activities. In addition, much of the infrastructure work preparing our state for additional climate change events must happen quickly and efficiently. It is in the interest of the state to ensure labor harmony and promote efficient performance of work on climate change related work sites by requiring workers to be well-trained and adequately compensated.

10. Ensuring career opportunities are created and shared geographically and demographically is necessary to ensure increased access to good jobs for marginalized communities while making the same neighborhoods more resilient. Climate change has a disproportionate impact on low-income people, women, and workers. It is in the interest of the state of New York to protect and promote the interests of these groups against the impacts of climate change and severe weather events and to advance our equity goals by ensuring quality employment opportunities in safe working environments.
11. The complexity of the ongoing energy transition, the uneven distribution of economic opportunity, and the disproportionate cumulative economic and environmental burdens on communities mean that there is a strong state interest in setting a floor statewide for labor standards, but allowing and encouraging individual agencies and local governments to raise standards.

12. By exercising a global leadership role on greenhouse gas mitigation and climate change adaptation, New York will position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to address climate change. New York state has already demonstrated leadership in this area by undertaking efforts such as:

a. executive order no. 24 (2009), establishing a goal to reduce greenhouse gas emissions 80% by the year 2050, creating a climate action council, and calling for preparation of a climate action plan;

b. chapter 433 of the laws of 2009, establishing a state energy planning board and requiring the board to adopt a state energy plan;

c. chapter 388 of the laws of 2011, directing the department of environmental conservation to promulgate rules and regulations limiting emissions of carbon dioxide by newly constructed major generating facilities;

d. the adoption of a state energy plan establishing clean energy goals for the year 2030 aimed at reducing greenhouse gas emission levels by 40% from 1990 levels, producing 70% of electricity from renewable sources, increasing energy efficiency from 2012 levels by 23% and the additional expressed goal of reducing 100% of the electricity sector's greenhouse gas emissions by 2040;

e. collaboration with other states on the Regional Greenhouse Gas Initiative, and the development of a regional low carbon fuel standard;

f. creation of new offices and task forces to address climate change, including the New York state office of climate change, the renewable energy task force, and the sea level rise task force; and

g. the enactment of the Community Risk and Resiliency Act (CRRA), which requires agencies to consider sea level rise and other climate-related events when implementing certain state programs.

This legislation will build upon these past developments by creating a comprehensive regulatory program to reduce greenhouse gas emissions that corresponds with the targets established in executive order no. 24, the state energy plan, and USGCRP and IPCC projections.

§ 2. The environmental conservation law is amended by adding a new article 75 to read as follows:

ARTICLE 75
CLIMATE CHANGE

Section 75-0101. Definitions.

75-0103. New York state climate action council.
75-0105. Statewide greenhouse gas emissions report.
75-0107. Statewide greenhouse gas emissions limits.
75-0109. Promulgation of regulations to achieve statewide greenhouse gas emissions reductions.
75-0111. Climate justice working group.
75-0113. Value of carbon.
75-0115. Community air monitoring program.
75-0117. Investment of funds.
75-0119. Implementation reporting.

§ 75-0101. Definitions.
For the purposes of this article the following terms shall have the following meanings:

1. "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

2. "Carbon dioxide equivalent" means the amount of carbon dioxide by mass that would produce the same global warming impact as a given mass of another greenhouse gas over an integrated twenty-year time frame after emission.


4. "Council" means the New York state climate action council established pursuant to section 75-0103 of this article.

5. "Disadvantaged communities" means communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.

6. "Emissions reduction measures" means programs, measures and standards, authorized pursuant to this chapter, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

7. "Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other substance emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change.

8. "Greenhouse gas emission limit" means the maximum allowable level of statewide greenhouse gas emissions, in a specified year, expressed in tons of carbon dioxide equivalent, as determined by the department pursuant to this article.

9. "Greenhouse gas emission offset" means a deduction representing one metric ton of carbon dioxide equivalent emissions, reduced, avoided, or sequestered by a greenhouse gas emission offset project from a measured baseline of emissions pursuant to the statewide greenhouse gas emissions report.

10. "Greenhouse gas emission offset projects" means one or more projects, including:
    a. Natural carbon sinks including but not limited to afforestation, reforestation, or wetlands restoration;
    b. Greening infrastructure;
    c. Restoration and sustainable management of natural and urban forests or working lands, grasslands, coastal wetlands and sub-tidal habitats;
    d. Efforts to reduce hydrofluorocarbon refrigerant, sulfur hexafluoride, and other ozone depleting substance releases;
    e. Anaerobic digesters, where energy produced is directed toward localized use;
    f. Carbon capture and sequestration;
    g. Ecosystem restoration; and
    h. Other types of projects recommended by the council in consultation with the climate justice working group that provide public health and environmental benefits, and do not create burdens in disadvantaged communities.

11. "Greenhouse gas emission source" or "source" means any anthropogenic source or category of anthropogenic sources of greenhouse gas emissions, determined by the department:
    a. whose participation in the program will enable the department to effectively reduce greenhouse gas emissions; and,
b. that are capable of being monitored for compliance.

12. "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside of the state.

13. "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases produced within the state from anthropogenic sources and greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the state and the extraction and transmission of fossil fuels imported into the state. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

14. "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in a specified year, as determined by the department pursuant to this article.

15. "Environmental justice advisory group" shall mean the permanent environmental justice advisory group established by a chapter of the laws of two thousand nineteen amending the environmental conservation law relating to establishing a permanent environmental justice advisory group and an environmental justice interagency coordinating council, as proposed in legislative bills numbers S. 2385 and A. 1564.

§ 75-0103. New York state climate action council.

1. There is hereby established the New York state climate action council ("council") which shall consist of the following twenty-two members:

   a. the commissioners of transportation, health, economic development, agriculture and markets, housing and community renewal, environmental conservation, labor, the chairperson of the public service commission, the presidents of the New York state energy research and development authority; New York power authority; Long Island power authority; the secretary of state, or their designees.

   b. two non-agency expert members appointed by the governor;

   c. three members to be appointed by the temporary president of the senate;

   d. three members to be appointed by the speaker of the assembly;

   e. one member to be appointed by the minority leader of the senate; and

   f. one member to be appointed by the minority leader of the assembly.

2. The at large members shall include at all times individuals with expertise in issues relating to climate change mitigation and/or adaptation, such as environmental justice, labor, public health and regulated industries.

3. Council members shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

4. The co-chairpersons of the council shall be the commissioner of environmental conservation and the president of the New York state energy research and development authority or their designee.

5. Each member of the council shall be entitled to one vote. The council's approval and adoption of the final scoping plan pursuant to this section, and any subsequent interim updates thereto, shall require a supermajority of the council. No action may be taken by the council unless there is a quorum, which shall at all times be a majority of the members of the council.

6. Any vacancies on the council shall be filled in the manner provided for the initial appointment.
7. The council shall convene advisory panels requiring special expertise and, at a minimum, shall establish advisory panels on transportation, energy intensive and trade-exposed industries, land-use and local government, energy efficiency and housing, power generation, and agriculture and forestry. The purpose of the advisory panels shall be to provide recommendations to the council on specific topics, in its preparation of the scoping plan, and interim updates to the scoping plan, and in fulfilling the council’s ongoing duties.

a. Each advisory panel shall be chaired by the relevant agency head or his or her designee. The council may convene and dissolve additional advisory panels, in its sole discretion, and pursuant to the requirements herein.

b. Advisory panels shall be comprised of no more than five voting members. The council shall elect advisory panel members, and such membership shall at all times represent individuals with direct involvement or expertise in matters to be addressed by the advisory panels pursuant to this section.

c. Advisory panels shall work directly with the council on the preparation of the scoping plan pursuant to this section. Each advisory panel shall coordinate with the environmental justice advisory group and climate justice working group.

d. All agencies of the state or subdivisions thereof may, at the request of any such advisory panel or the council, provide the advisory panel with such facilities, assistance, and data as will enable advisory panels to carry out their powers and duties.

8. The council shall convene a just transition working group. The working group shall be chaired by the commissioner of labor and the president of the New York state energy research and development authority and shall consist of no less than thirteen, but no more than seventeen members and shall include the commissioners of housing and community renewal, the chair of the department of public service, representatives of environmental justice communities and representatives of labor organizations, clean energy developers and at least five representatives of distinct energy-intensive industries. The just transition working group shall:

a. advise the council on issues and opportunities for workforce development and training related to energy efficiency measures, renewable energy and other clean energy technologies, with specific focus on training and workforce opportunities for disadvantaged communities, and segments of the population that may be underrepresented in the clean energy workforce such as veterans, women and formerly incarcerated persons;

b. identify energy-intensive industries and related trades and identify sector specific impacts of the state’s current workforce and avenues to maximize the skills and expertise of New York state workers in the new energy economy;

c. identify sites of electric generating facilities that may be closed as a result of a transition to a clean energy sector and the issues and opportunities presented by reuse of those sites;

d. with respect to potential for greenhouse gas emission limits developed by the department of environmental conservation pursuant to this article, advise the council on the potential impacts of carbon leakage risk on New York state industries and local host communities, including the impact of any potential carbon reduction measures on the competitiveness of New York state business and industry;
e. advise the council and conduct stakeholder outreach on any other workforce matters directed by the council; and

f. at a time frame determined by the council, prepare and publish recommendations to the council on how to address: issues and opportunities related to the energy-intensive and trade-exposed entities; workforce development for trade-exposed entities, disadvantaged communities and underrepresented segments of the population; measures to minimize the carbon leakage risk and minimize anti-competitiveness impacts of any potential carbon policies and energy sector mandates.

g. The just transition working group is hereby authorized and directed to conduct a study of and report on:

i. The number of jobs created to counter climate change, which shall include but not be limited to the energy sector, building sector, transportation sector, and working lands sector;

ii. The projection of the inventory of jobs needed and the skills and training required to meet the demand of jobs to counter climate change; and

iii. Workforce disruption due to community transitions from a low carbon economy.

9. The department and the New York state energy research and development authority shall provide the council with such facilities, assistance and data as will enable the council to carry out its powers and duties. Additionally, all other agencies of the state or subdivisions thereof may, at the request of the co-chairpersons, provide the council with such facilities, assistance, and data as will enable the council to carry out its powers and duties.

10. The council shall consult with the climate justice working group established in section 75-0111 of this article, the department of state utility intervention unit, and the federally designated electric bulk system operator.

11. The council shall on or before two years of the effective date of this article, prepare and approve a scoping plan outlining the recommendations for attaining the statewide greenhouse gas emissions limits in accordance with the schedule established in section 75-0107 of this article, and for the reduction of emissions beyond eighty-five percent, net zero emissions in all sectors of the economy, which shall inform the state energy planning board's adoption of a state energy plan in accordance with section 6-104 of the energy law. The first state energy plan issued subsequent to completion of the scoping plan required by this section shall incorporate the recommendations of the council.

12. The draft scoping plan shall be developed in consultation with the environmental justice advisory group, and the climate justice working group established pursuant to section 75-0111 of this article and other stakeholders.

a. The council shall hold at least six regional public comment hearings on the draft scoping plan, including three meetings in the upstate region and three meetings in the downstate region, and shall allow at least one hundred twenty days for the submission of public comment.

b. The council shall provide meaningful opportunities for public comment from all segments of the population that will be impacted by the plan, including persons living in disadvantaged communities as identified pursuant to section 75-0111 of this article.

c. On or before three years of the effective date of this article, the council shall submit the final scoping plan to the governor, the speaker of the assembly and the temporary president of the senate and post such plan on its website.
13. The scoping plan shall identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits established pursuant to section 75-0107 of this article. The measures and actions considered in such scoping plan shall at a minimum include:

a. Performance-based standards for sources of greenhouse gas emissions, including but not limited to sources in the transportation, building, industrial, commercial, and agricultural sectors.

b. Measures to reduce emissions from the electricity sector by displacing fossil-fuel fired electricity with renewable electricity or energy efficiency.

c. Land-use and transportation planning measures aimed at reducing greenhouse gas emissions from motor vehicles.

d. Measures to achieve long-term carbon sequestration and/or promote best management practices in land use, agriculture and forestry.

e. Measures to achieve six gigawatts of distributed solar energy capacity installed in the state by two thousand twenty-five, nine gigawatts of offshore wind capacity installed by two thousand thirty-five, a statewide energy efficiency goal of one hundred eighty-five trillion British thermal units energy reduction from the two thousand twenty-five forecast; and three gigawatts of statewide energy storage capacity by two thousand thirty.

f. Measures to promote the beneficial electrification of personal and freight transport and other strategies to reduce greenhouse gas emissions from the transportation sector.

g. Measures to achieve reductions in energy use in existing residential or commercial buildings, including the beneficial electrification of water and space heating in buildings, establishing appliance efficiency standards, strengthening building energy codes, requiring annual building energy benchmarking, disclosing energy efficiency in home sales, and expanding the ability of state facilities to utilize performance contracting.

h. Recommendations to aid in the transition of the state workforce and the rapidly emerging clean energy industry.

i. Measures to achieve healthy forests that support clean air and water, biodiversity, and sequester carbon.

j. Measures to limit the use of chemicals, substances or products that contribute to global climate change when released to the atmosphere, but are not intended for end-use combustion.

k. Mechanisms to limit emission leakage as defined in subdivision eleven of section 75-0101 of this article.

l. Verifiable, enforceable and voluntary emissions reduction measures.

14. In developing such plan the council shall:

a. Consider all relevant information pertaining to greenhouse gas emissions reduction programs in states in the United States Climate Alliance, as well as other states, regions, localities, and nations.

b. Evaluate, using the best available economic models, emission estimation techniques and other scientific methods, the total potential costs and potential economic and non-economic benefits of the plan for reducing greenhouse gases, and make such evaluation publicly available. In conducting this evaluation, the council shall quantify:

i. The economic and social benefits of greenhouse gas emissions reductions, taking into account the value of carbon, established by the department pursuant to section 75-0113 of this article, any other tools that the council deems useful and pertinent for this analysis, and any environmental, economic and public health co-benefits (such as the
reduction of co-pollutants and the diversification of energy sources);
and
ii. The costs of implementing proposed emissions reduction measures,
and the emissions reductions that the council anticipates achieving
through these measures.

c. Take into account the relative contribution of each source or
source category to statewide greenhouse gas emissions, and the potential
for adverse effects on small businesses, and recommend a de minimis
threshold of greenhouse gas emissions below which emission reduction
requirements will not apply.
d. Identify measures to maximize reductions of both greenhouse gas
emissions and co-pollutants in disadvantaged communities as identified
pursuant to section 75-0111 of this article.

15. The council shall update its plan for achieving the statewide
greenhouse gas emissions limits at least once every five years and shall
make such updates available to the governor, the speaker of the assembly
and the temporary president of the senate and post such updates on its
website.

16. The council shall identify existing climate change mitigation and
adaptation efforts at the federal, state, and local levels and may make
recommendations regarding how such policies may improve the state's
efforts.

17. The council shall maintain a website that includes public access
to the scoping plan and greenhouse gas limit information.

§ 75-0105. Statewide greenhouse gas emissions report.

1. No later than two years after the effective date of this article,
and each year thereafter, the department shall issue a report on state-
wide greenhouse gas emissions, expressed in tons of carbon dioxide
equivalents, from all greenhouse gas emission sources in the state,
including the relative contribution of each type of greenhouse gas and
each type of source to the statewide total.

2. The statewide greenhouse gas emissions report shall be a comprehen-
sive evaluation, informed by a variety of data, including but not limit-
et to:
   a. information relating to the use of fossil fuels by sector, includ-
ing for electricity generation, transportation, heating, and other
combustion purposes;
   b. information relating to fugitive and vented emissions from systems
associated with the production, processing, transport, distribution,
storage, and consumption of fossil fuels, including natural gas;
   c. information relating to emissions from non-fossil fuel sources,
including, but not limited to, garbage incinerators, biomass combustion,
landfills and landfill gas generators, and anaerobic digesters;
   d. information relating to emissions associated with manufacturing,
chemical production, cement plants, and other processes that produce
non-combustion emissions; and
   e. information from sources that may be required to participate in the
registration and reporting system pursuant to subdivision four of this
section.

3. The statewide greenhouse gas emissions report shall also include an
estimate of greenhouse gas emissions associated with the generation of
imported electricity and with the extraction and transmission of fossil
fuels imported into the state which shall be counted as part of the
statewide total.

4. Within one year after the effective date of this article, the
department shall consider establishing a mandatory registry and report-
ing system from individual sources to obtain data on greenhouse gas emissions exceeding a particular threshold. If established, such registry and reporting system shall apply a consistent reporting threshold to ensure the unbiased collection of data.

5. The statewide greenhouse gas emissions report shall also include an estimate of what the statewide greenhouse gas emissions level was in 1990.

6. The statewide greenhouse gas emissions report shall utilize best available science and methods of analysis, including the comparison and reconciliation of emission estimates from all sources, fuel consumption, field data, and peer-reviewed research.

7. The statewide greenhouse gas emissions report shall clearly explain the methodology and analysis used in the department’s determination of greenhouse gas emissions and shall include a detailed explanation of any changes in methodology or analysis, adjustments made to prior estimates, as needed, and any other information necessary to establish a scientifically credible account of change.

8. The department shall hold at least two public hearings to seek public input regarding the methodology and analysis used in the determination of statewide greenhouse gas emissions, and periodically thereafter.

§ 75-0107. Statewide greenhouse gas emissions limits.

1. No later than one year after the effective date of this article, the department shall, pursuant to rules and regulations promulgated after at least one public hearing, establish a statewide greenhouse gas emissions limit as a percentage of 1990 emissions, as estimated pursuant to section 75-0105 of this article, as follows:
   a. 2030: 60% of 1990 emissions.
   b. 2050: 15% of 1990 emissions.

2. Greenhouse gas emission limits shall be measured in units of carbon dioxide equivalents and identified for each individual type of greenhouse gas.

3. In order to ensure the most accurate determination feasible, the department shall utilize the best available scientific, technological, and economic information on greenhouse gas emissions and consult with the council, stakeholders, and the public in order to ensure that all emissions are accurately reflected in its determination of 1990 emissions levels.

4. In order to comply with the statewide greenhouse gas emissions limits promulgated pursuant to this section, a source may utilize the alternative compliance mechanism established pursuant to subdivision four of section 75-0109 of this article. The use of such mechanism shall be in accordance with the provisions of that subdivision.

§ 75-0109. Promulgation of regulations to achieve statewide greenhouse gas emissions reductions.

1. No later than four years after the effective date of this article, the department, after public workshops and consultation with the council, the environmental justice advisory group, and the climate justice working group established pursuant to section 75-0111 of this article, representatives of regulated entities, community organizations, environmental groups, health professionals, labor unions, municipal corporations, trade associations and other stakeholders, shall, after no less than two public hearings, promulgate rules and regulations to ensure compliance with the statewide emissions reduction limits and work with other state agencies and authorities to promulgate regulations required...
by section eight of the chapter of the laws of two thousand nineteen
that added this article.

2. The regulations promulgated by the department pursuant to this
section shall:
   a. Ensure that the aggregate emissions of greenhouse gases from green-
   house gas emission sources will not exceed the statewide greenhouse gas
   emissions limits established in section 75-0107 of this article.
   b. Include legally enforceable emissions limits, performance stand-
   ards, or measures or other requirements to control emissions from green-
   house gas emission sources, with the exception of agricultural emissions
   from livestock.
   c. Reflect, in substantial part, the findings of the scoping plan
   prepared pursuant to section 75-0103 of this article.
   d. Include measures to reduce emissions from greenhouse gas emission
   sources that have a cumulatively significant impact on statewide green-
   house gas emissions, such as internal combustion vehicles that burn
   gasoline or diesel fuel and boilers or furnaces that burn oil or natural
   gas.

3. In promulgating these regulations, the department shall:
   a. Design and implement all regulations in a manner that seeks to be
   equitable, to minimize costs and to maximize the total benefits to New
   York, and encourages early action to reduce greenhouse gas emissions.
   b. Ensure that greenhouse gas emissions reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the department.
   c. Ensure that activities undertaken to comply with the regulations do
   not result in a net increase in co-pollutant emissions or otherwise
disproportionately burden disadvantaged communities as identified pursu-
ant to section 75-0111 of this article.
   d. Prioritize measures to maximize net reductions of greenhouse gas
   emissions and co-pollutants in disadvantaged communities as identified
   pursuant to section 75-0111 of this article and encourage early action
to reduce greenhouse gas emissions and co-pollutants.
   e. Incorporate measures to minimize leakage.

4. a. The department may establish an alternative compliance mechanism
   to be used by sources subject to greenhouse gas emissions limits to
   achieve net zero emissions.
   b. The use of such mechanism shall account for not greater than
   fifteen percent of statewide greenhouse gas emissions estimated as a
   percentage of nineteen ninety emissions pursuant to section 75-0105 of
   this article, provided that the use of this mechanism must offset a
   quantity greater than or equal to the greenhouse gases emitted. The
   offset of greenhouse gas emissions shall not result in disadvantaged
   communities having to bear a disproportionate burden of environmental
   impacts.
   c. The department shall verify that greenhouse gas emission offset
   projects authorized pursuant to this subdivision represent greenhouse
gas equivalent emission reductions or carbon sequestration that are
   real, additional, verifiable, enforceable, and permanent.
   d. Any greenhouse gas emissions offset project shall comply with all
   of the requirements of this subdivision.
   e. The department shall establish an application process that, at a
   minimum, requires a source to sufficiently demonstrate that compliance
   with the greenhouse gas emissions limits is not technologically feasi-
   ble, and that the source has reduced emissions to the maximum extent
   practicable. After an initial four year period, the department shall
   review the participation of a source in this mechanism, and make a
determination as to the source’s continued need for an alternative compliance, considering the extent to which the source is utilizing the best available technology standards.

g. The following types of projects shall be prohibited:

i. waste-to-energy projects, including incineration and pyrolysis; and

ii. biofuels used for energy or transportation purposes.

h. Any greenhouse gas emission offset project approved by the department shall:

i. be designed to provide a discernable benefit to the environment rather than to the source;

ii. be located in the same county, and within twenty-five linear miles, of the source of emissions, to the extent practicable;

iii. enhance the conditions of the ecosystem or geographic area adversely affected; and

iv. substantially reduce or prevent the generation or release of pollutants through source reduction.

i. A greenhouse gas emission offset project shall not be approved by the department where the project:

i. is required pursuant to any local, state or federal law, regulation, or administrative or judicial order;

ii. contains measures which the source would have undertaken anyway within the next five years;

iii. contributes to environmental research at a college or university; or

iv. is a study or assessment without a commitment to implement the results.

j. In approving greenhouse gas emission offset projects, the department shall prioritize projects that maximize public health and environmental benefits within the state and especially localized benefits in disadvantaged communities, defined pursuant to section 75-0111 of this article.

k. The department shall establish a public registry of greenhouse gas emission offset projects approved pursuant to this subdivision.

l. Prior to the inclusion of any alternative compliance mechanism in the regulations, to the extent feasible and in the furtherance of achieving the statewide greenhouse gas emissions limit, the department shall do all of the following:

i. consult with the council, the environmental justice advisory group, and the climate justice working group;

ii. consider the potential for direct, indirect, and cumulative emission impacts from this mechanism, including localized impacts in disadvantaged communities as identified pursuant to section 75-0111 of this article;

iii. design the alternative compliance mechanism to prevent any increase in the emissions of co-pollutants; and

iv. maximize additional environmental, public health, and economic benefits for the state and for disadvantaged communities identified pursuant to section 75-0111 of this article, as appropriate.

§ 75-0111. Climate justice working group.

1. There is hereby created within the department, no later than six months after the effective date of this article, a "climate justice working group". Such working group will be comprised of representatives from environmental justice communities, the department, the department
of health, the New York state energy and research development authority,
and the department of labor.

a. Environmental justice community representatives shall be members of
communities of color, low-income communities, and communities bearing
disproportionate pollution and climate change burdens, or shall be
representatives of community-based organizations with experience and a
history of advocacy on environmental justice issues, and shall include
at least three representatives from New York city communities, three
representatives from rural communities, and three representatives from
upstate urban communities.

b. The working group, in consultation with the department, the depart-
ments of health and labor, the New York state energy and research devel-
opment authority, and the environmental justice advisory group, will
establish criteria to identify disadvantaged communities for the
purposes of co-pollutant reductions, greenhouse gas emissions
reductions, regulatory impact statements, and the allocation of invest-
ments related to this article.

c. Disadvantaged communities shall be identified based on geographic,
public health, environmental hazard, and socioeconomic criteria, which
shall include but are not limited to:

i. areas burdened by cumulative environmental pollution and other
hazards that can lead to negative public health effects;

ii. areas with concentrations of people that are of low income, high
unemployment, high rent burden, low levels of home ownership, low levels
of educational attainment, or members of groups that have historically
experienced discrimination on the basis of race or ethnicity; and

iii. areas vulnerable to the impacts of climate change such as flooding,
storm surges, and urban heat island effects.

2. Before finalizing the criteria for identifying disadvantaged commu-
nities and identifying disadvantaged communities pursuant to subdivision
one of this section, the department shall publish draft criteria and a
draft list of disadvantaged communities and make such information avail-
able on its website.

a. The council shall hold at least six regional public hearings on the
draft criteria and the draft list of disadvantaged communities, includ-
ing three meetings in the upstate region and three meetings in the down-
state region, and shall allow at least one hundred twenty days for the
submission of public comment.

b. The council shall also ensure that there are meaningful opportu-
nities for public comment for all segments of the population that will
be impacted by the criteria, including persons living in areas that may
be identified as disadvantaged communities under the proposed criteria.

3. The group will meet no less than annually to review the criteria
and methods used to identify disadvantaged communities and may modify
such methods to incorporate new data and scientific findings. The
climate justice working group shall review identities of disadvantaged
communities and modify such identities as needed.

§ 75-0113. Value of carbon.

1. No later than one year after the effective date of this article,
the department, in consultation with the New York state energy research
and development authority, shall establish a social cost of carbon for
use by state agencies, expressed in terms of dollars per ton of carbon
dioxide equivalent.

2. The social cost of carbon shall serve as a monetary estimate of the
value of not emitting a ton of greenhouse gas emissions. As determined
by the department, the social cost of carbon may be based on marginal
greenhouse gas abatement costs or on the global economic, environmental, and social impacts of emitting a marginal ton of greenhouse gas emissions into the atmosphere, utilizing a range of appropriate discount rates, including a rate of zero.

3. In developing the social cost of carbon, the department shall consider prior or existing estimates of the social cost of carbon issued or adopted by the federal government, appropriate international bodies, or other appropriate and reputable scientific organizations.

§ 75-0115. Community air monitoring program.
1. For purposes of this section, the following definitions and related provisions shall apply:
   a. "Community air monitoring system" means advanced sensing monitoring equipment that measures and records air pollutant concentrations in the ambient air at or near sensitive receptor locations in disadvantaged communities.
   b. "Disadvantaged community" means a community identified as disadvantaged pursuant to the criteria set forth in section 75-0111 of this article.
   c. "Sensitive receptors" includes hospitals, schools and day care centers, and such other locations as the department may determine.

2. a. On or before October first, two thousand twenty-two, the department shall prepare, in consultation with the climate justice working group, a program demonstrating community air monitoring systems.
   b. The program shall identify the highest priority locations in disadvantaged communities around the state to deploy community air monitoring systems, which shall be communities with potentially high exposure burdens for toxic air contaminants and criteria air pollutants. The program shall be undertaken in no less than four communities statewide with regional consideration.
   c. The department shall publish the air quality data produced by the community air monitoring systems deployed pursuant to this section on its website as it becomes available.

3. On or before June first, two thousand twenty-four, the department shall prepare, in consultation with the climate justice working group, a strategy to reduce emissions of toxic air contaminants and criteria air pollutants in disadvantaged communities affected by a high cumulative exposure burden. The strategy shall include criteria for the development of community emission reduction programs. The criteria presented in the strategy shall include, but are not limited to, the following:
   a. an assessment and identification of communities with high cumulative exposure burdens for toxic air contaminants and criteria air pollutants.
   b. a methodology for assessing and identifying the contributing sources or categories of sources, including, but not limited to, stationary and mobile sources, and an estimate of their relative contribution to elevated exposure to air pollution in impacted communities identified pursuant to paragraph a of this subdivision.
   c. an assessment of the existing and available measures for reducing emissions from the contributing sources or categories of sources identified pursuant to paragraph b of this subdivision.

4. a. Based on the assessment and identification of disadvantaged communities with high cumulative exposure burdens for toxic air contaminants and criteria air pollutants completed pursuant to paragraph a of subdivision three of this section, the department shall select disadvantaged communities around the state for preparation of community emis-
sessions reduction programs. The department may select additional locations annually thereafter, as appropriate.

b. The department shall have the authority to adopt regulations establishing programs to achieve emissions reductions for the locations selected using the most cost-effective measures identified pursuant to paragraph c of subdivision three of this section.

§ 75-0117. Investment of funds.
State agencies, authorities and entities, in consultation with the environmental justice working group and the climate action council, shall, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve a goal for disadvantaged communities to receive forty percent of overall benefits of spending on clean energy and energy efficiency programs, projects or investments in the areas of housing, workforce development, pollution reduction, low income energy assistance, energy, transportation and economic development, provided however, that disadvantaged communities shall receive no less than thirty-five percent of the overall benefits of spending on clean energy and energy efficiency programs, projects or investments and provided further that this section shall not alter funds already contracted or committed as of the effective date of this section.

§ 75-0119. Implementation reporting.
1. The department in consultation with the council shall, not less than every four years, publish a report which shall include recommendations regarding the implementation of greenhouse gas reduction measures.
2. The report shall, at minimum, include:
   a. Whether the state is on track to meet the statewide greenhouse gas emissions limits established in section 75-0107 of this article.
   b. An assessment of existing regulations and whether modifications are needed to ensure fulfillment of the statewide greenhouse gas emissions limits.
   c. An overview of social benefits from the regulations or other measures, including reductions in greenhouse gas emissions and copollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.
   d. An overview of compliance costs for regulated entities and for the department and other state agencies.
   e. Whether regulations or other greenhouse gas reduction measures undertaken are equitable, minimize costs and maximize the total benefits to the state, and encourage early action.
   f. Whether activities undertaken to comply with state regulations disproportionately burden disadvantaged communities as identified pursuant to section 75-0111 of this article.
   g. An assessment of local benefits and impacts of any reductions in co-pollutants related to reductions in statewide and local greenhouse gas emissions.
   h. An assessment of disadvantaged communities' access to or community ownership of the services and commodities identified in section six of the chapter of the laws of two thousand nineteen which added this article.
   i. Whether entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this article receive appropriate credit for early voluntary reductions.
   j. Recommendations for future regulatory and policy action.
3. In preparing this report, the department shall, at a minimum, consult with the council, and the climate justice working group established in section 75-0111 of this article.

4. The report shall be published and posted on the department's website.

§ 3. Paragraphs f and g of subdivision 1 of section 54-1523 of the environmental conservation law, as added by section 5 of part U of chapter 58 of the laws of 2016, are amended and a new paragraph h is added to read as follows:

f. enabling communities to become certified under the climate smart communities program, including by developing natural resources inventories, right sizing of municipal fleets and developing climate adaptation strategies; and

g. climate change adaptation planning and supporting studies, including but not limited to vulnerability assessment and risk analysis of municipal drinking water, wastewater, and transportation infrastructure; and

h. to establish and implement easily-replicated renewable energy projects, including solar arrays, heat pumps and wind turbines in public low-income housing in suburban, urban and rural areas.

§ 4. The public service law is amended by adding a new section 66-p to read as follows:

§ 66-p. Establishment of a renewable energy program. 1. As used in this section:

(a) "jurisdictional load serving entity" means any entity subject to the jurisdiction of the commission that secures energy to serve the electrical energy requirements of end-use customers in New York state;

(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

2. No later than June thirtieth, two thousand twenty-one, the commission shall establish a program to require that: (a) a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty shall be generated by renewable energy systems; and (b) that by the year two thousand forty (collectively, the "targets") the statewide electrical demand system will be zero emissions. In establishing such program, the commission shall consider and where applicable formulate the program to address impacts of the program on safe and adequate electric service in the state under reasonably foreseeable conditions. The commission may, in designing the program, modify the obligations of jurisdictional load serving entities and/or the targets upon consideration of the factors described in this subdivision.

3. No later than July first, two thousand twenty-four and every two years thereafter, the commission shall, after notice and provision for the opportunity to comment, issue a comprehensive review of the program established pursuant to this section. The commission shall determine, among other matters: (a) progress in meeting the overall targets for deployment of renewable energy systems and zero emission sources, including factors that will or are likely to frustrate progress toward the targets; (b) distribution of systems by size and load zone; and (c) annual funding commitments and expenditures.
4. The commission may temporarily suspend or modify the obligations under such program provided that the commission, after conducting a hearing as provided in section twenty of this chapter, makes a finding that the program impedes the provision of safe and adequate electric service; the program is likely to impair existing obligations and agreements; and/or that there is a significant increase in arrears or service disconnections that the commission determines is related to the program.

5. No later than July first, two thousand twenty-four, the commission shall establish programs to require the procurement by the state’s load serving entities of at least nine gigawatts of offshore wind electricity generation by two thousand thirty-five and six gigawatts of photovoltaic solar generation by two thousand twenty-five, and to support three gigawatts of statewide energy storage capacity by two thousand thirty.

6. In any proceeding commenced by the commission with a goal of achieving one hundred eighty-five trillion British thermal units of end-use energy savings below the two thousand twenty-five energy-use forecast, the commission will include mechanisms to ensure that, where practicable, at least twenty percent of investments in residential energy efficiency, including multi-family housing, can be invested in a manner which will benefit disadvantaged communities, as defined in article seventy-five of the environmental conservation law, including low to moderate income consumers.

7. In the implementation of this section, the commission shall design programs in a manner to provide substantial benefits for disadvantaged communities, as defined in article seventy-five of the environmental conservation law, including low to moderate income consumers, at a reasonable cost while ensuring safe and reliable electric service. Specifically, the commission shall:

   (a) To the extent practicable, specify that a minimum percentage of energy storage projects should deliver clean energy benefits into NYISO zones that serve disadvantaged communities, as defined in article seventy-five of the environmental conservation law, including low to moderate income consumers, and that energy storage projects be deployed to reduce the usage of combustion-powered peaking facilities located in or near disadvantaged communities;

   (b) In pursuing the state’s solar deployment goals, the New York state energy research and development authority shall consider enhanced incentive payments for solar and community distributed generation projects, focusing in particular but not limited to those serving disadvantaged communities, as defined in article seventy-five of the environmental conservation law, which result in energy cost savings or demonstrate community ownership models; and,

   (c) In the allocation of ratepayer funds for clean energy, direct the New York state energy research and development authority and investor owned utilities to develop and report metrics for energy savings and clean energy market penetration in the low and moderate income market and in disadvantaged communities, as defined in article seventy-five of the environmental conservation law, and post such information on the authority’s website.

§ 5. This act shall be subject to current prevailing wage law.

§ 6. Report on barriers to, and opportunities for, community ownership of services and commodities in disadvantaged communities. 1. On or before two years of the effective date of this act, the department of environmental conservation, in cooperation with the New York state energy research and development authority and the New York power authority, with input from relevant state agencies, the environmental justice advi-
sory group as defined in section 75-0101 of the environmental conserva-
tion law, the climate justice working group as defined in section
75-0111 of the environmental conservation law and Climate Action Council
established in article 75 of the environmental conservation law, and
following at least two public hearings, shall prepare a report on barri-
ners to, and opportunities for, access to or community ownership of the
following services and commodities in disadvantaged communities as iden-
tified in article 75 of the environmental conservation law:
   a. Distributed renewable energy generation.
   b. Energy efficiency and weatherization investments.
   c. Zero-emission and low-emission transportation options.
   d. Adaptation measures to improve the resilience of homes and local
   infrastructure to the impacts of climate change including but not limit-
ed to microgrids.
   e. Other services and infrastructure that can reduce the risks associ-
ated with climate-related hazards, including but not limited to:
      i. Shelters and cool rooms during extreme heat events;
      ii. Shelters during flooding events; and
      iii. Medical treatment for asthma and other conditions that could be
          exacerbated by climate-related events.
2. The report, which shall be submitted to the governor, the speaker
   of the assembly and the temporary president of the senate and posted on
   the department of environmental conservation website, shall include
   recommendations on how to increase access to the services and commod-
ities.
3. The department of environmental conservation shall amend the scop-
ing plan for statewide greenhouse gas emissions reductions in accordance
with the recommendations included in the report.
§ 7. Climate change actions by state agencies. 1. All state agencies
shall assess and implement strategies to reduce their greenhouse gas
emissions.
2. In considering and issuing permits, licenses, and other administra-
tive approvals and decisions, including but not limited to the execution
of grants, loans, and contracts, all state agencies, offices, authori-
ties, and divisions shall consider whether such decisions are inconsist-
ent with or will interfere with the attainment of the statewide green-
house gas emissions limits established in article 75 of the envi-
ronmental conservation law. Where such decisions are deemed to be
inconsistent with or will interfere with the attainment of the statewide
greenhouse gas emissions limits, each agency, office, authority, or
division shall provide a detailed statement of justification as to why
such limits/criteria may not be met, and identify alternatives or green-
house gas mitigation measures to be required where such project is
located.
3. In considering and issuing permits, licenses, and other administra-
tive approvals and decisions, including but not limited to the execution
of grants, loans, and contracts, pursuant to article 75 of the environ-
mental conservation law, all state agencies, offices, authorities, and
divisions shall not disproportionately burden disadvantaged communities
as identified pursuant to subdivision 5 of section 75-0101 of the envi-
ronmental conservation law. All state agencies, offices, authorities,
and divisions shall also prioritize reductions of greenhouse gas emis-
sions and co-pollutants in disadvantaged communities as identified
pursuant to such subdivision 5 of section 75-0101 of the environmental
conservation law.
§ 8. Authorization for other state agencies to promulgate greenhouse
gas emissions regulations. 1. The public service commission, the New
York state energy research and development authority, the department of
health, the department of transportation, the department of state, the
department of economic development, the department of agriculture and
markets, the department of financial services, the office of general
services, the division of housing and community renewal, the public
utility authorities established pursuant to titles 1, 1-A, 1-B, 11,
11-A, 11-B, 11-C and 11-D of article 5 of the public authorities law and
any other state agency shall promulgate regulations to contribute to
achieving the statewide greenhouse gas emissions limits established in
article 75 of the environmental conservation law. Provided, however, any
such regulations shall not limit the department of environmental conser-
vation's authority to regulate and control greenhouse gas emissions
pursuant to article 75 of the environmental conservation law.

§ 9. Chapter 355 of the laws of 2014, constituting the community risk
and resiliency act, is amended by adding two new sections 17-a and 17-b
to read as follows:

§ 17-a. The department of environmental conservation shall take
actions to promote adaptation and resilience, including:
(a) actions to help state agencies and other entities assess the
reasonably foreseeable risks of climate change on any proposed projects,
taking into account issues such as: sea level rise, tropical and extra-
tropical cyclones, storm surges, flooding, wind, changes in average and
peak temperatures, changes in average and peak precipitation, public
health impacts, and impacts on species and other natural resources.
(b) identifying the most significant climate-related risks, taking
into account the probability of occurrence, the magnitude of the poten-
tial harm, and the uncertainty of the risk.
(c) measures that could mitigate significant climate-related risks, as
well as a cost-benefit analysis and implementation of such measures.

§ 17-b. Major permits for the regulatory programs of subdivision three
of section 70-0107 of the environmental conservation law shall require
applicants to demonstrate that future physical climate risk has been
considered. In reviewing such information the department may require the
applicant to mitigate significant risks to public infrastructure and/or
services, private property not owned by the applicant, adverse impacts
on disadvantaged communities, and/or natural resources in the vicinity
of the project.

§ 10. Nothing in this act shall limit the existing authority of a
state entity to adopt and implement greenhouse gas emissions reduction
measures.

§ 11. Nothing in this act shall relieve any person, entity, or public
agency of compliance with other applicable federal, state, or local laws
or regulations, including state air and water quality requirements, and
other requirements for protecting public health or the environment.

§ 12. Review under this act may be had in a proceeding under article
78 of the civil practice law and rules at the instance of any person
aggrieved.

§ 13. Severability. If any word, phrase, clause, sentence, paragraph,
section, or part of this act shall be adjudged by any court of competent
jurisdiction to be invalid, such judgement shall not affect, impair, or
invalidate the remainder thereof, but shall be confined in its operation
to the word, phrase, clause, sentence, paragraph, section, or part ther-
eof directly involved in the controversy in which such judgement shall
have been rendered.
§ 14. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2019, amending the environmental conservation law, relating to establishing a permanent environmental justice advisory group and an environmental justice interagency coordinating council, as proposed in legislative bills numbers S. 2385 and A. 1564, takes effect; provided further, the provisions of section 75-0115 of the environmental conservation law as added by section two of this act shall take effect October 1, 2022.
AN ACT to amend the environmental conservation law, in relation to providing that one hundred percent of in-state sales of new passenger cars and trucks shall be zero-emissions by two thousand thirty-five

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1. The environmental conservation law is amended by adding a new section 19-0306-b to read as follows:

§ 19-0306-b. Zero-emissions cars and trucks.

1. It shall be a goal of the state that one hundred percent of new passenger cars and trucks offered for sale or lease, or sold, or leased, for registration in the state shall be zero-emissions by two thousand thirty-five. It shall be a further goal of the state that one hundred percent of medium-duty and heavy-duty vehicles offered for sale or lease, or sold, or leased, for registration in the state be zero-emissions by two thousand forty-five for all operations where feasible. It shall be further a goal of the state to transition to one hundred percent zero-emissions off-road vehicles and equipment by two thousand thirty-five where feasible.

2. The department, to the extent consistent with federal law, shall develop and propose:

a. Passenger vehicle and truck regulations requiring increasing volumes of new zero-emissions vehicles offered for sale or lease, or sold, or leased, for registration in the state towards the target of one hundred percent of in-state sales by two thousand thirty-five.

b. Medium-duty and heavy-duty vehicle regulations requiring increasing volumes of new zero-emissions trucks and buses offered for sale or lease, or sold, or leased, for registration and operated in the state towards the target of one hundred percent of the fleet transitioning to zero-emissions vehicles by two thousand forty-five everywhere feasible.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted. LBD04327-02-1
c. Strategies, in coordination with other state agencies and the federal environmental protection agency, to achieve one hundred percent zero-emissions from off-road vehicles and equipment operations in the state by two thousand thirty-five. In implementing the provisions of this paragraph, the department shall act consistently with safety, technological feasibility and cost-effectiveness.

3. The department, in consultation with the department of economic development, the New York state energy research and development authority, the public service commission, the department of transportation, the department of motor vehicles, and other state agencies, local agencies and other interested parties, shall develop a zero-emissions vehicle market development strategy by January thirty-first, two thousand twenty-three, and an update every three years thereafter, that:
   a. Ensures coordinated and expeditious implementation of the system of policies, programs and regulations necessary to achieve the goals and orders established by this section.
   b. Outlines state agencies' actions to support new and used zero-emissions vehicle markets for broad accessibility for all residents of this state.

4. The department, the New York state energy research and development authority, the public service commission and other state agencies, shall use existing authorities to accelerate deployment of affordable powering options for zero-emissions vehicles, in ways that serve all communities and particularly low-income and disadvantaged communities, consistent with state and federal law.

5. The department, the New York state energy research and development authority, the department of motor vehicles and the department of transportation, in consultation with the other state agencies, shall on or before July fifteenth, two thousand twenty-three, identify near term actions and investment strategies to improve sustainable transportation, freight and transit options, including where feasible:
   a. Supporting bicycle and pedestrian options, particularly in low-income and disadvantaged communities in the state, by incorporating safe and accessible infrastructure into projects where appropriate.
   b. Supporting light, medium, and heavy-duty zero-emissions vehicles and infrastructure as part of larger transportation projects, where appropriate.

§ 2. This act shall take effect immediately.
AN ACT to amend the energy law, the executive law and the state finance law, in relation to establishing the "advanced building codes, appliance and equipment efficiency standards act of 2022"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "advanced building codes, appliance and equipment efficiency standards act of 2022".

§ 2. Subdivision 2 of section 3-101 of the energy law, as amended by chapter 253 of the laws of 2013, is amended to read as follows:

2. to encourage conservation of energy and to promote the clean energy and climate agenda, including but not limited to greenhouse gas reduction, set forth within chapter one hundred six of the laws of two thousand nineteen, also known as the New York state climate leadership and community protection act, in the construction and operation of new commercial, industrial, agricultural and residential buildings, and in the rehabilitation of existing structures, through heating, cooling, ventilation, lighting, insulation and design techniques and the use of energy audits and life-cycle costing analysis;

§ 3. Subdivisions 3 and 9 of section 11-102 of the energy law, as added by chapter 560 of the laws of 2010, are amended, subdivisions 11, 12, 13, 14 and 15 are renumbered to be subdivisions 12, 13, 14, 15 and 16, and a new subdivision 11 is added to read as follows:


9. "Historic building." Any building that is one or more of the following: (a) listed, or certified as eligible for listing, on the national register of historic places or on the state register of histor-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.
places, (b) determined by the commissioner of parks, recreation and historic preservation to be eligible for listing on the state register of historic places] designated as historic under an applicable state or local law, or (c) determined by the commissioner of parks, recreation and historic preservation to be a contributing building to an historic district that is listed or eligible for listing on the state or national registers of historic places, or (d) otherwise defined as an historic building in regulations adopted by the state fire prevention and building code council certified as a contributing resource within a national register-listed, state register-listed, or locally designated historic district.

11. "Life-cycle cost." An estimate of the total cost of acquisition, operation, maintenance, and construction of any energy system within or related to a building over the design life of the building. "Life-cycle cost" includes, but is not limited to, the cost of fuel, materials, machinery, ancillary devices, labor, service, replacement, and repairs.

§ 4. Paragraph (b) of subdivision 1 and subdivisions 2 and 3 of section 11-103 of the energy law, paragraph (b) of subdivision 1 as added and subdivision 2 as amended by chapter 560 of the laws of 2010 and subdivision 3 as amended by chapter 292 of the laws of 1998, are amended to read as follows:

(b) The code shall apply to the construction of any new building. The code shall also apply to an addition to, and alteration of, any existing building or building system; provided, however, that the code shall not be interpreted to require any unaltered portion of the existing building or building system to comply with the code. The code shall not apply to the following provided that the energy use of the building is not increased:

1. storm windows installed over existing fenestration;
2. glass only replacements in an existing sash and frame;
3. existing ceiling, wall or floor cavities exposed during construction provided that these cavities are filled with insulation;
4. construction where the existing roof, wall or floor cavity is not exposed;
5. reroofing for roofs where neither the sheathing nor the insulation is exposed; roofs without insulation in the cavity and where the sheathing or insulation is exposed during reroofing shall be insulated either above or below the sheathing;
6. replacement of existing doors that separate conditioned space from the exterior shall not require the installation of a vestibule or revolving door, provided, however, that an existing vestibule that separates such conditioned space from the exterior shall not be removed;
7. alterations that replace less than fifty percent of the luminaires in a space, provided that such alterations do not increase the installed interior lighting power;
8. alterations that replace only the bulb and ballast within the existing luminaires in a space provided that the alteration does not increase the installed interior lighting power; and
9. any other exception be subject to such other exceptions as may be adopted by the state fire prevention and building code council provided that such exception will not prevent the attainment of the compliance goals set forth in section 410(2)(c) of the American Recovery and Reinvestment Act of 2009.

2. (a) The state fire prevention and building code council is authorized, from time to time as it deems appropriate and consistent with the purposes of this article, to review and amend the code, or adopt a new
code, through rules and regulations provided that the code remains cost
effective with respect to building construction in the state. In deter-
mining whether the code remains cost effective, the code council shall
consider [whether the cost of materials and their installation to meet
its standards would be equal to or less than the present value of energy
savings that could be expected over a ten-year period in the building in
which such materials are installed] (i) whether the life-cycle costs for
a building will be recovered through savings in energy costs over the
design life of the building under a life-cycle cost analysis performed
under methodology as established by the New York state energy research
and development authority in regulations which may be updated from time
to time, and (ii) secondary or societal effects, such as reductions in
greenhouse gas emissions, as defined in regulations. Before publication
of a notice of proposed rule making establishing the methodology or
defining secondary or societal effects, the president of the authority
shall conduct public meetings to provide meaningful opportunities for
public comment from all segments of the population that would be
impacted by the regulations, including persons living in disadvantaged
communities as identified by the climate justice working group estab-
lished under section 75-0111 of the environmental conservation law. For
residential buildings, the code shall meet or exceed the then most
recently published International Energy Conservation Code, or achieve
equivalent or greater energy savings; and for commercial buildings, the
code shall meet or exceed the then most recently published ASHRAE
90.1-2007, or achieve equivalent or greater energy savings.

(b) When adopting the first amended version of the code next following
the effective date of the chapter of the laws of two thousand twenty-two
that added this paragraph and any subsequent codes, the state fire
prevention and building code council shall use its best efforts to adopt
provisions for residential buildings that achieve energy savings greater
than energy savings achieved by the then most recently published Inter-
national Energy Conservation Code and to adopt provisions for commercial
buildings that achieve energy savings greater than energy savings
achieved by the then most recently published ASHRAE 90.1, both at levels
recommended by the New York state energy research and development
authority, provided that the state fire prevention and building code
council determines that such advanced energy savings can be achieved
while still meeting the cost effectiveness considerations contemplated
by this subdivision.

3. Notwithstanding any other provision of law, the state fire
prevention and building code council in accordance with the mandate
under this article shall have exclusive authority among state agencies
to promulgate a construction code incorporating energy conservation
features and clean energy features applicable to the construction of any
building, including but not limited to greenhouse gas reduction. Any
other code, rule or regulation heretofore promulgated or enacted by any
other state agency, incorporating specific energy conservation and clean
energy requirements applicable to the construction of any building,
shall be superseded by the code promulgated pursuant to this section.
Notwithstanding the foregoing, nothing in this section shall be deemed
to expand the powers of the council to include matters that are exclu-
sively within the statutory jurisdiction of the public service commis-
sion, the department of environmental conservation, the office of renew-
able energy siting or another state entity.
§ 5. Subdivision 5 of section 11-104 of the energy law, as amended by chapter 560 of the laws of 2010, is amended and a new subdivision 6 is added to read as follows:

5. The code shall exempt from such uniform standards and requirements any historic building as defined in section 11-102 of this article state fire prevention and building code council, in consultation with the commissioner of the department of parks, recreation and historic preservation, is authorized to adopt exemptions to such uniform standards and requirements for historic buildings as defined in section 11-102 of this article, to the extent that the uniform standards and requirements would threaten, degrade, or destroy the historic form, fabric, or function of such historic buildings.

6. To the fullest extent feasible, the standards for construction of buildings in the code shall be designed to help achieve the state's clean energy and climate agenda, including but not limited to greenhouse gas reduction, set forth within chapter one hundred six of the laws of two thousand nineteen, also known as the New York state climate leadership and community protection act, and as further identified by the New York state climate action council established pursuant to section 75-0103 of the environmental conservation law.

§ 6. The article heading of article 16 of the energy law, as added by chapter 431 of the laws of 2005, is amended to read as follows:

APPLIANCE AND EQUIPMENT [ENERGY] EFFICIENCY STANDARDS

§ 6-a. Section 16-102 of the energy law is amended by adding a new subdivision 1-a to read as follows:

1-a. "Product" means any appliance or equipment, other than a motor vehicle, which in operation consumes or is designed to consume energy or to result in the consumption of energy, including any water-related appliance, equipment or fixture that is designed to consume or result in the consumption of energy in its operation or use.

§ 7. Subdivision 4-a of section 16-102 of the energy law, as added by chapter 222 of the laws of 2010, is amended to read as follows:

4-a. ["Bottle-type water dispenser" means a water dispenser that uses a bottle or reservoir as the source of potable water.] The following definitions refer to water coolers:

(a) "Bottle-type" means a water dispenser that uses a bottle or reservoir as the source of potable water.
(b) "Water cooler" means a freestanding device that consumes energy to cool and/or heat potable water.
(c) "Cold only units" means units that dispense cold water only.
(d) "Hot and cold units" means units that dispense both hot and cold water. Some units may also offer room-temperature water.
(e) "Cook and cold units" means units that dispense both cold and room-temperature water.
(f) "Point of use (POU)" means the water cooler is connected to a pressurized water source.
(g) "Conversion-type" means a unit that ships as either bottle-type or POU and includes a conversion kit intended to convert the water cooler from a bottle-type unit to a POU unit or to convert a POU unit to a bottle-type unit.
(h) "Storage-type" means thermally conditioned water is stored in a tank in the water cooler and is available instantaneously.
(i) "On demand" means the water cooler heats water as it is requested, which typically takes a few minutes to deliver.

§ 8. Subdivision 11 of section 16-102 of the energy law, as added by chapter 431 of the laws of 2005, is amended to read as follows:
11. "Consumer audio and video product" means televisions, a mains-connected product that amplifies audio, offers optical, offers disc player functionality, and/or receives and plays audio and/or video content. Examples of consumer audio and video products include compact audio products, digital versatile disc players, digital versatile disc recorders, and digital television adapters and streaming media players. Televisions are specifically excluded from consumer audio and video products.

§ 9. Subdivision 18 of section 16-102 of the energy law, as added by chapter 431 of the laws of 2005, is amended to read as follows:

18. "Energy efficiency performance standards" means performance standards which prescribe a minimum level of energy efficiency determined in accordance with test procedures prescribed by the secretary in consultation with the president, a standard that defines performance metrics and/or defines prescriptive design requirements associated with the regulated category of product in order to reduce energy consumption, reduce water consumption, and reduce greenhouse gas emissions associated with energy consumption and/or increase demand flexibility.

§ 10. Subdivisions 27-a and 27-b of section 16-102 of the energy law, as added by chapter 222 of the laws of 2010, are amended to read as follows:

27-a. "Portable electric spa" means a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water which may or may not include any combination of integral controls, water heating or water circulating equipment.

27-b. "Portable light fixture" means a light fixture which has a flexible cord and an attachment plug for connection to a nominal one hundred twenty-volt, fifteen- or twenty-ampere branch circuit; which can be relocated by the user without any rewiring; which is typically controlled with a switch located on the light fixture itself or on the power cord; and which are intended for use in accordance with the national electrical code, ANSI/NFPA 70-2002. "Portable light fixture" does not include direct plug-in nightlights; sun and heat lamps; aquarium lamps; medical and dental lights; portable electric hand lamps; signs and commercial advertising displays; photographic lamps; germicidal lamps; metal-halide lamp fixtures; torchiere lighting fixtures; illuminated vanity mirrors; lava lamps not providing general or task illumination; industrial work lights rated for use with a lamp providing greater than seven thousand lumens; portable lamp fixtures for marine use or for use in hazardous locations as defined in the national electrical code, ANSI/NFPA 70; or decorative lighting outfits or electric candles and candelabras without lampshades that are covered by the standard for safety of seasonal and holiday decorative products, UL 588.

§ 11. Subdivision 29-a of section 16-102 of the energy law, as added by chapter 222 of the laws of 2010, is amended to read as follows:

29-a. "[Residential] Replacement dedicated-purpose pool pump motor" means a product which is designed or used to circulate and filter residential swimming pool water in order to maintain clarity and sanitation and which consists in part of a motor and an impeller; an electric motor that:

(a) is single-phase or polyphase;
(b) has a dedicated purpose pool pump motor total horsepower of less than or equal to five horsepower;
(c) is marketed for use as a replacement motor in self-priming pool filter pump, non-self-priming pool filter pump or pressure cleaner booster pump applications; and

(d) excludes polyphase replacement dedicated-purpose pool pump motors capable of operating without a drive, and is sold or offered for sale without a drive that converts single-phase power to polyphase power.

§ 12. Subdivision 33 of section 16-102 of the energy law, as added by chapter 431 of the laws of 2005, is amended to read as follows:

33. "Television (TV)" means [a commercially available electronic product consisting of a tuner/receiver and a monitor encased in a single housing, which is] an analog or digital device primarily designed to receive and display [an analog or digital video television signal broadcast by an antenna, satellite, cable, or broadband source] terrestrial, satellite, cable, Internet Protocol TV (IPTV), or other broadcast or recorded transmissions of analog or digital video and audio signals. TVs include combination TVs, television monitors, component TVs, and any unit that is marketed to the consumer as a TV. "Television" does not include [multifunction TVs which have VCR, DVD, DVR, or EPG functions] computer monitors.

§ 13. Section 16-102 of the energy law is amended by adding thirty-eight new subdivisions 18-a, 18-b, 21-c, 21-d, 38, 39, 40, 41, 41-a, 42, 42-a, 43, 43-a, 44, 45, 46, 46-a, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67 to read as follows:

18-a. "Greenhouse gas" means "greenhouse gas" as defined in subdivision seven of section 75-0101 of the environmental conservation law.

18-b. "Demand flexibility" means the capability to schedule, shift, or curtail the electrical demand of a load-serving entity's customer through direct action by the customer or through action by a third party, the load-serving entity, or a grid balancing authority, with the customer's consent.

21-c. "Duv" means a metric that quantifies the distance between the chromaticity of a given light source and a blackbody radiator of equal correlated color temperature (CCT) on a CIE 1976 (u, v) chromatic diagram demonstrating how different two light sources of the same color temperature appear.

21-d. "Light Emitting Diode (LED) lamp" means a lamp capable of producing light with Duv between -0.012 and 0.012, and that has an E12, E17, E26, or GU-24 base, including LED lamps that are designed for retrofit within existing recessed can housings that contain one of the preceding bases. LED lamp does not include a lamp with a brightness of more than two thousand six hundred lumens or a lamp that cannot produce light with a correlated color temperature between two thousand two hundred Kelvin and seven thousand Kelvin.

38. The following definitions refer to air compressors:

(a) "Air compressor" means a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver or drivers mechanical equipment to drive the compressor element, and any ancillary equipment.

(b) "Compressor" means a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher-pressure values above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3.

39. The following definitions refer to air purifiers:
(a) "Air purifier", also known as "room air cleaner", means an electric, cord-connected, portable appliance with the primary function of removing particulate matter from the air and which can be moved from room to room.

(b) "Industrial air purifier" means an indoor air cleaning device manufactured, advertised, marketed, labeled, and used solely for industrial use that are marketed solely through industrial supply outlets or businesses and prominently labeled as " Solely for industrial use. Potential health hazard: emits ozone."

40. "Commercial dishwasher" means a machine designed to clean and sanitize plates, pots, pans, glasses, cups, bowls, utensils, and trays by applying sprays of detergent solution (with or without blasting media granules) and a sanitizing rinse and is not a "compact dishwasher" or "standard dishwasher" (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW-1 using the test load specified in section 2.7 of appendix C in subpart B of 10 CFR 430.2).

41. "Commercial fryer" means an appliance for non-residential use, including a cooking vessel, in which oil is placed to such a depth that the cooking fluid is essentially supported by displacement of the cooking fluid rather than by the bottom of the vessel. Heat is delivered to the cooking fluid by means of an immersed electric element of band-wrapped vessel (electric fryers) or by heat transfer from gas burners through either the walls of the fryer or through tubes passing through the cooking fluid (gas fryers).

41-a. "Commercial oven" means a chamber designed for heating, roasting, or baking food by conduction, convection, radiation, and/or electromagnetic energy.

42. "Commercial steam cooker" also known as "compartment steamer", means a device for non-residential use with one or more food-steaming compartments in which the energy in the steam is transferred to the food by direct contact. Models may include countertop models, wall-mounted models, and floor models mounted on a stand, pedestal, or cabinet-style base.

42-a. "Commercial hot food holding cabinet" means a heated, fully enclosed compartment, with one or more solid or partial glass doors, that is designed to maintain the temperature of hot food that has been cooked in a separate appliance. "Commercial hot food holding cabinet" does not include heated glass merchandising cabinets, drawer warmers or cook-and-hold appliances.

43. "Computer" means a device that performs logical operations and processes data. A computer includes both stationary and portable units and includes a desktop computer, a portable all-in-one, a notebook computer, a mobile gaming system, a high-expandability computer, a small-scale server, a thin client, and a workstation. Although a computer is capable of using input devices and displays, such devices are not required to be included with the computer when the computer is shipped. A computer is composed of, at a minimum, (a) a central processing unit (CPU) to perform operations or, if no CPU is present, then the device must function as a client gateway to a server, and the server acts as a computational CPU; (b) the ability to support user input devices such as a keyboard, mouse, or touch pad; and (c) an integrated display screen or the ability to support an external display screen to output information. The term "computer" does not include a tablet, a game console, a television, a device with an integrated and primary display that has a screen size of twenty square inches or less, a server other than a small-scale server, or an industrial computer.
43-a. "Computer monitor" means an analog or digital device of size greater than or equal to seventeen inches and less than or equal to sixty-one inches, that has a pixel density of greater than five thousand pixels per square inch, and that is designed primarily for the display of computer-generated signals for viewing by one person in a desk-based environment. A computer monitor is composed of a display screen and associated electronics. A computer monitor does not include, (a) displays with integrated or replaceable batteries designed to support primary operation without AC mains or external DC power (e.g. electronic readers, mobile phones, portable tablets, battery-powered digital picture frames); or (b) a television or signage display.

44. "General service lamp" shall include the following definitions:
   (a) "Compact fluorescent lamp (CFL)" means an integrated or non-integrated single-base, low-pressure mercury, electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light; this term shall not include circline or U-shaped lamps.
   (b) "General service incandescent lamp" means a standard incandescent or halogen type lamp that is intended for general service applications, has a medium screw base, has a lumen range of not less than three hundred ten lumens and not more than two thousand six hundred lumens, or in the case of a modified spectrum lamp, not less than two hundred thirty-two lumens and not more than one thousand nine hundred fifty lumens, and is capable of being operated at a voltage range at least partially within one hundred ten and one hundred thirty volts; provided, however, that this definition shall not apply to the following incandescent lamps:
      (i) Appliance lamps;
      (ii) Black light lamps;
      (iii) Bug lamps;
      (iv) Colored lamps;
      (v) G shape lamps (as defined in ANSI C78.20 and C79.1-2002) with a diameter of five inches or more;
      (vi) Infrared lamps;
      (vii) Left-hand thread lamps;
      (viii) Marine lamps;
      (ix) Marine signal service lamps;
      (x) Mine service lamps;
      (xi) Plant light lamps;
      (xii) Reflector lamps;
      (xiii) Sign service lamps;
      (xiv) Silver bowl lamps;
      (xv) Showcase lamps;
      (xvi) Rough service lamps;
      (xvii) Shatter-resistant lamps (including shatter-proof lamps and shatter-protected lamps);
      (xviii) 3-way incandescent lamps;
      (xix) Vibration service lamps;
      (xx) AB, BA, CA, F, G16-1/2, G-25, G30, S, or M-14 lamps (as defined in ANSI C79.1-2002 and ANSI C78.20) of forty watts or less;
      (xxi) T shape lamps (as defined in ANSI C78.20 and ANSI C79.1-2002) that uses not more than forty watts or has a length of more than ten inches; and
      (xxii) Traffic signal lamps.
   (c) "General service lamp" means a lamp that has an ANSI base, is able to operate at a voltage of twelve volts or twenty-four volts, at or
between one hundred to one hundred thirty volts, at or between two hundred twenty to two hundred forty volts, or of two hundred seventy-seven volts for integrated lamps, or is able to operate at any voltage for non-integrated lamps, has an initial lumen output of greater than or equal to three hundred ten lumens (or two hundred thirty-two lumens for modified spectrum general service incandescent lamps) and less than or equal to three thousand three hundred lumens, is not a light fixture, is not an LED downlight retrofit kit, and is used in general lighting applications. General service lamps shall include, but not be limited to, general service incandescent lamps, incandescent reflector lamps, compact fluorescent lamps, general service light emitting diode lamps, and general service organic light emitting diode lamps. General service lamps shall not include:

(i) Appliance lamps;
(ii) Black light lamps;
(iii) Bug lamps;
(iv) Colored lamps;
(v) G shape lamps with a diameter of five inches or more as defined in ANSI C79.1-2002;
(vi) General service fluorescent lamps;
(vii) High intensity discharge lamps;
(viii) Infrared lamps;
(ix) J, JC, JCD, JCS, JCV, JCX, JD, JS, and JT shape lamps that do not have Edison screw bases;
(x) Lamps that have a wedge base or prefocus base;
(xi) Left-hand thread lamps;
(xii) Marine lamps;
(xiii) Marine signal service lamps;
(xiv) Mine service lamps;
(xv) MR shape lamps that have a first number symbol equal to sixteen (diameter equal to two inches) as defined in ANSI C79.1-2002, operate at twelve volts and have a lumen output greater than or equal to 800;
(xvi) Other fluorescent lamps;
(xvii) Plant light lamps;
(xviii) R20 short lamps;
(xix) Reflector lamps that have a first number symbol less than sixteen (diameter less than two inches) as defined in ANSI C79.1-2002 and that do not have E26/E24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases;
(xx) S shape or G shape lamps that have a first number symbol less than or equal to 12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1-2002;
(xxi) Sign service lamps;
(xxii) Silver bowl lamps;
(xxiii) Showcase lamps;
(xxiv) Specialty MR lamps;
(xxv) T shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to one inch) as defined in ANSI C79.1-2002, nominal overall length less than twelve inches, and that are not compact fluorescent lamps; and
(xxvi) Traffic signal lamps.

(d) "General service light-emitting diode (LED) lamp" means an integrated or non-integrated LED lamp designed for use in general lighting applications and that uses light-emitting diodes as the primary source of light.
(e) "General service organic light-emitting diode (OLED) lamp" means a thin-film light-emitting device that typically consists of a series of organic layers between two electrical contacts (electrodes).

(f) "Incandescent reflector lamp" or "reflector lamp" means any lamp in which light is produced by a filament heated to incandescence by an electric current, which: contains an inner reflective coating on the outer bulb to direct the light; is not colored; is not designed for rough or vibration service applications; is not an R20 short lamp; has an R, PAR, ER, BR, BPAR, or similar bulb shapes with an E26 medium screw base; has a rated voltage or voltage range that lies at least partially in the range of one hundred fifteen and one hundred thirty volts; has a diameter that exceeds 2.25 inches; and has a rated wattage that is forty watts or higher.

45. "Federally exempt fluorescent lamp" means any linear lamps excluded from the definition of general service fluorescent lamps in 10 CFR 430.32(n). Federally exempt fluorescent lamps include high-CRI linear fluorescent lamps, impact-resistant linear fluorescent lamps, cold-temperature linear fluorescent lamps, and less than four-foot linear fluorescent lamps.

46. The following definitions refer to portable air conditioners:

(a) "Portable air conditioner" means a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. Such portable air conditioner includes a source of refrigeration and may include additional means for air circulation and heating and may be a single-duct or a dual-duct portable air conditioner.

(b) "Single-duct portable air conditioner" means a portable air conditioner that draws all of the condenser inlet air from the conditioned space without the means of a duct and discharges the condenser outlet air outside the conditioned space through a single-duct attached to an adjustable window bracket.

(c) "Dual-duct portable air conditioner" means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, may draw additional condenser inlet air from outside the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

46-a. "Residential ventilating fan" means a fan with the purpose to actively supply air to or remove air from the inside of a residence. This includes ceiling and wall-mounted fans or remotely mounted in-line fans designed to be used in a bathroom or utility room, supply fans designed to provide air to indoor space and kitchen range hoods. Supply fans may also be designed to filter incoming air.

47. "Telephone" means an electronic product whose primary purpose is to transmit and receive sound over a distance using a voice or data network.

48. The following definitions refer to faucets and showerheads:

(a) "Faucet" means a lavatory faucet, kitchen faucet, metering faucet, public lavatory faucet, or replacement aerator for a lavatory, public lavatory or kitchen faucet.

(b) "Public lavatory faucet" means a fitting intended to be installed in nonresidential bathrooms that are exposed to walk-in traffic.

(c) "Metering faucet" means a faucet that, when turned on, will gradually shut itself off over a period of several seconds.
(d) "Replacement aerator" means an aerator sold as a replacement, separate from the faucet to which it is intended to be attached.

(e) "Showerhead" means a device through which water is discharged for a shower bath and includes a hand-held showerhead but does not include a safety shower showerhead.

(f) "Hand-held showerhead" means a showerhead that can be held or fixed in place for the purpose of spraying water onto a bather and that is connected to a flexible hose.

49. The following definitions refer to urinals and water closets:

(a) "Plumbing fixture" means an exchangeable device, which connects to a plumbing system to deliver and drain away water and waste.
(b) "Urinal" means a plumbing fixture that receives only liquid body waste and, conveys the waste through a trap into a drainage system.
(c) "Water closet" means a plumbing fixture having a water-containing receptor that receives liquid and solid body waste through an exposed integral trap into a drainage system.
(d) "Dual-flush effective flush volume" means the average flush volume of two reduced flushes and one full flush.
(e) "Dual-flush water closet" means a water closet incorporating a feature that allows the user to flush the water closet with either a reduced or a full volume of water.
(f) "Trough-type urinal" means a urinal designed for simultaneous use by two or more persons.

50. The following definitions refer to spray sprinkler bodies:

(a) "Pressure regulator" means a device that maintains constant operating pressure immediately downstream from the device, given higher pressure upstream.
(b) "Spray sprinkler body" means the exterior case or shell of a sprinkler incorporating a means of connection to the piping system designed to convey water to a nozzle or orifice.

51. "Uninterruptable power supply" means a battery charger consisting of a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure.

52. "Commercial battery charger system (BCS)" or "state-regulated BCS" means a battery charger coupled with its batteries or battery chargers coupled with their batteries, which together are referred to as state-regulated battery charger systems. This term covers all rechargeable batteries or devices incorporating a rechargeable battery and the chargers used with them. Battery charger systems include, but are not limited to:

(a) electronic devices with a battery that are normally charged from AC line voltage or DC input voltage through an internal or external power supply and a dedicated battery charger;
(b) the battery and battery charger components of devices that are designed to run on battery power during part or all of their operations; and
(c) dedicated battery systems primarily designed for electrical or emergency backup; and
(d) devices whose primary function is to charge batteries, along with the batteries they are designed to charge. These units include chargers for power tool batteries and chargers for automotive, AA, AAA, C, D, or 9V rechargeable batteries, as well as chargers for batteries used in larger industrial motive equipment and a la carte chargers.

The charging circuitry of battery charger systems may or may not be located within the housing of the end-use device itself. In many cases, the battery may be charged with a dedicated external charger and power
supply combination that is separate from the device that runs on power
from the battery. State-regulated battery charger systems do not include
federally regulated battery chargers that are covered under standards in
10 C.F.R. section 430.32(z).
53. "Gas fireplace" means a decorative gas fireplace or a heating gas
fireplace.
   (a) "Decorative gas fireplace" means a vented fireplace, including
appliances that are freestanding, recessed, zero clearance, or a gas
fireplace insert, that is fueled by natural gas or propane, is marked
for decorative use only, and is not equipped with a thermostat or
intended for use as a heater.
   (b) "Heating gas fireplace" means a vented fireplace, including appli-
ances that are freestanding, recessed, zero clearance, or a gas fire-
place insert, that is fueled by natural gas or propane and is not a
decorative fireplace.
54. "Manufactured home" has the meaning ascribed to that term by
subdivision seven of section six hundred one of the executive law.
55. "Recreational vehicle" means a van or utility vehicle used for
recreational purposes.
56. "Uniform code" means the New York state uniform fire prevention
and building code adopted pursuant to article eighteen of the executive
law.
57. "Energy code" means the New York state energy conservation
construction code adopted pursuant to article eleven of this chapter.
58. "Electric vehicle supply equipment (EVSE)" means equipment that
supplies electricity in an appropriate form to storage devices, includ-
ing batteries and super capacitors, that are part of electric vehicles.
Such term shall include equipment that performs this function and equip-
ment that is embedded in electric vehicles.
59. "Electric vehicle" means an on-road vehicle that draws electricity
for propulsion from a traction battery with a least five kilowatt-hours
(kWh) of capacity, and uses an external source of energy to recharge the
battery. Such term shall include a plug-in hybrid electric vehicle
(PHEV) with a second source of energy for propulsion, and a battery
electric vehicle (BEV), which is powered solely by externally supplied
electricity stored on-board such electric vehicle.
60. "Commercial clothes dryer" means a clothes dryer designed to dry
fabrics in a tumble-type drum with forced air circulation and is
designed for use in:
   (a) Applications in which the occupants of more than one household
will be using the clothes dryer, including multi-family housing common
areas and coin laundries; or
   (b) Other commercial applications.
61. "Commercial and industrial fans and blowers" means a rotary-bladed
machine used to convert power to air power, with a brake horsepower
greater than or equal to either one kilowatt or one horsepower, and an
air horsepower less than or equal to one hundred fifty, and used for
commercial and industrial purposes.
62. "Imaging equipment" means copiers, printers, scanners, fax
machines, and multifunction devices used both in homes and businesses.
63. "Landscape irrigation controller" means a device intended to
remotely control valves to operate an irrigation system for landscapes,
which may consist of grass, shrubs, trees and/or other vegetation. This
term shall not include devices that are typically sold separately and
used primarily for other purposes, such as a network router, and may be
used incidentally for a landscape irrigation controller. This term shall
not include battery powered hose-end timers or devices used primarily in agricultural applications.

64. "Outdoor lighting" means electrical lighting used to illuminate outdoor areas, including parking lots, streetlights, highways and area luminaires.

65. "Plug-in luminous signs" means a self-contained, luminous sign unit that plugs into 120V AC building mains power and is intended for indoor use only. Signs may be intended for use in commercial outlets in business establishments or in residences.

66. "Small network equipment" means a device whose primary function is to pass internet protocol (IP) traffic among various network interfaces or ports intended for use in residential and small business settings.

67. "Tub spout diverters" means the following definitions:
   (a) A bath and shower diverter whose diverter mechanism is located in the tub spout; and/or
   (b) Bath and shower diverter means a device used to direct the flow of water either toward a tub spout or toward a secondary outlet intended for showering purposes, including a showerhead or body spray.

§ 14. Section 16-104 of the energy law, as added by chapter 431 of the laws of 2005, subdivision 1 as amended by chapter 222 of the laws of 2010, is amended to read as follows:

§ 16-104. Applicability, conduct prohibited. 1. The provisions of this article apply to the establishment of, testing for compliance with, certification of compliance with, and enforcement of efficiency standards for the following new products which are sold, or offered for sale, leased or offered for lease, rented or offered for rent or installed or offered to install in New York state unless preempting federal appliance standards are in effect: (a) automatic commercial ice cube machines; (b) ceiling fan light kits; (c) commercial pre-rinse spray valves; (d) commercial refrigerators, freezers and refrigerator-freezers; (e) consumer audio and video products; (f) illuminated exit signs; (g) incandescent reflector lamps; (h) very large commercial packaged air-conditioning and heating equipment; (i) metal halide lamp fixtures; (j) pedestrian traffic signal modules; (k) power supplies; (l) torchiere lighting fixtures; (m) unit heaters; (n) vehicular traffic signal modules; (o) portable light fixtures; (p) bottle-type water dispensers; (q) commercial hot food holding cabinets; (r) portable electric spas; [and] (s) [residential] replacement dedicated-purpose pool [pumps] pump motors; (t) air compressors; (u) air purifiers; (v) commercial dishwashers; (w) commercial fryers; (x) commercial steam cookers; (y) computers and computer monitors; (z) general service lamps; (aa) federally exempt fluorescent lamps; (bb) portable air conditioners; (cc) residential ventilating fans; (dd) telephones; (ee) faucets; (ff) showerheads; (gg) urinals; (hh) water closets; (ii) sprinkler bodies; (jj) uninterruptable power supplies; (kk) light emitting diode lamps; (ll) electric vehicle supply equipment; (mm) commercial battery charger systems; (nn) commercial ovens; (oo) commercial clothes dryers; (pp) commercial and industrial fans and blowers; (qq) imaging equipment; (rr) landscape irrigation controllers; (ss) outdoor lighting; (tt) plug-in luminous signs; (uu) small network equipment; (vv) tub spout diverters; (ww) commercial hot food holding cabinets; (xx) gas fireplaces; (yy) products for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision one of section 16-106 of this article; and (zz) products that had been subject to any federal efficiency standard referred to in section 16-105 of this article that have been continued in this state pursuant to such section.
1. (a) No person shall sell, lease or offer to lease, or rent or offer to rent, or install or offer to install in New York state any new product of the types enumerated in paragraphs (a) through (xx) of subdivision one of this section, or any [of the] new [products identified] product for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision [four] one of section 16-106 of this article, unless: (a) the product meets minimum energy performance standards adopted pursuant to this article upon the effective date of such standards; and, if required by regulations promulgated or any new product that is subject to any federal efficiency standard that shall have been continued in this state pursuant to [this] section[,(b) the manufacturer of such product certifies that the product meets said minimum energy performance standards.] 16-105 of this article, unless:

(a) it meets the efficiency standards applicable to such product as of the date of manufacture of such product or as of such other date as may be determined in accordance with the regulation establishing the standard for such product; and

(b) if required by regulations adopted pursuant to this article, the manufacturer of such product certifies that the product meets said efficiency standards. As used within this subdivision, reference to any new product means any individual product subject to the requirements of this article.

2. The prohibitions contained in [subdivisions one and] subdivision two of this section shall not apply to:

(a) products manufactured in the state and sold outside the state;

(b) products manufactured outside the state and sold at wholesale inside the state for final retail sale outside the state;

(c) products installed in manufactured homes at the time of construction; [or]

(d) products designed expressly for installation and use in recreational vehicles; or

(e) urinals and water closets designed and marketed exclusively for use at prisons or mental health care facilities.

3. The adoption of efficiency standards for any water-related appliances, equipment or fixtures shall be subject to approval by the commissioner of environmental conservation. Any such standard which would conflict with the provisions of section 15-0314 of the environmental conservation law shall not take effect until and unless waived by the commissioner of environmental conservation.

4. In adopting the flexible demand appliance standards, the New York state energy research and development authority shall consider the National Institute of Standards and Technology reliability and cybersecurity protocols, relevant New York cybersecurity laws, regulations, and advisories, or other cybersecurity protocols that are equally or more protective, and shall adopt, at a minimum, the North American Electric Reliability Corporation's Critical Infrastructure Protection standards.

5. § 15. The energy law is amended by adding a new section 16-105 to read as follows:

§ 16-105. Adoption of certain federal efficiency standards. 1. The federal efficiency standard established in 10CFR Parts 430 and 431, as in effect on January first, two thousand eighteen shall be applicable to products which are subject to such federal efficiency standards and which are sold, offered for sale, or installed in New York state. So long as such federal efficiency standards remain in effect as federal efficiency standards, they shall be enforced as provided by federal law.
The president shall adopt by regulation all such federal efficiency standards and provided that, if any such federal efficiency standard is withdrawn, repealed, voided, or otherwise ceases to remain in effect as a federal efficiency standard:

(a) such efficiency standard shall be continued in this state;
(b) until and unless amended or repealed pursuant to this article, the president shall be authorized to adopt regulations establishing procedures for testing the energy reduction, water conservation, greenhouse gas reduction, and/or increased demand flexibility associated with such product;
(c) the president shall be authorized to adopt regulations establishing procedures for manufacturers of such product to certify that such product meets such efficiency standard, if the president determines that such manufacturer's certifications should be required;
(d) the president shall be authorized to adopt regulations amending such efficiency standard from time to time, including regulations that repeal such efficiency standard, or increase the stringency of such efficiency standard; and
(e) if federal preemption has been waived for any particular federal efficiency standard or standards, the president may adopt such standard or may adopt a different standard.

2. This section shall not apply to any federal efficiency standard set aside by a court upon the petition of a person who will be adversely affected, as provided in 42 U.S.C. § 6306(b).

§ 16. Section 16-106 of the energy law, as added by chapter 431 of the laws of 2005, paragraph (c) of subdivision 2 as added by chapter 222 of the laws of 2010 and subdivision 4 as amended by chapter 69 of the laws of 2020, is amended to read as follows:

§ 16-106. [Administration of article] Powers and duties of the president and the secretary. 1. The secretary, in consultation with the president[,] shall have and be entitled to exercise the following powers and duties:

(a) To adopt regulations establishing efficiency standards for the products listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, including but not limited to, establishing efficiency performance standards for power supplies in the active mode and no-load mode or other such products while in the active mode and in the standby-passive-mode.  

(b) To promulgate regulations to achieve the purposes of this article provided however that no energy efficiency performance standard shall become effective for a product less than one hundred eighty days after it shall become final, provided, however, that no standard adopted pursuant to this article shall go into effect if federal government energy efficiency performance standards regarding such product preempt state standards unless preemption has been waived pursuant to federal law;

(c) To administer and enforce the provisions of this article and any rule or regulation promulgated thereunder or order issued pursuant thereto;

(d) To order, pursuant to section 16-104 of this article, the immediate cessation of any distribution, sale or offer for sale, import or installation of any product for which the secretary, in consultation with the president, determines that the certification of such product listed in subdivision one of section 16-104 of this article was achieved in violation of section 16-108 of this article];
(b) To adopt regulations establishing efficiency standards for products not specifically listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, provided that the president determines that establishing such efficiency standards would serve to promote energy reduction, water conservation, greenhouse gas reduction, and/or increased demand flexibility associated with the regulated product categories in this state. To the maximum extent feasible the president shall coordinate any such adoption with similar efforts by other states. Any regulation adopted pursuant to this paragraph may include provisions establishing procedures for testing the efficiency of the covered products and provisions establishing procedures for manufacturers of such product to certify that such products meet the efficiency standards, if the president determines that such manufacturer's certifications should be required:

(c) To review efficiency standards as adopted from time to time by other states for products not listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, and to adopt regulations establishing efficiency standards similar to those adopted by any other state for such products, provided that the president determines that establishing such efficiency standards would serve to promote energy reduction, water conservation, greenhouse gas reduction, and/or increased demand flexibility associated with the regulated product categories in this state. Any regulation adopted pursuant to this paragraph may include provisions establishing procedures for testing the efficiency of the covered products and provisions establishing procedures for manufacturers of such product to certify that such products meet the efficiency standards, if the president determines that such manufacturer's certifications should be required:

(d) To adopt regulations to achieve the purposes of this article. Such regulations shall ensure that compliance therewith will not result in a net increase in co-pollutant emissions or otherwise disproportionately burden disadvantaged communities as identified by the climate justice working group established under section 75-0111 of the environmental conservation law. In order to increase public participation and improve the efficacy of any efficiency standards adopted pursuant to subdivision (b) or (c) of this section, the president shall, before publication of a notice of proposed rule making, conduct public meetings to provide meaningful opportunities for public comment from all segments of the population that would be impacted by the standards or regulations, including persons living in disadvantaged communities as identified by the climate justice working group established under section 75-0111 of the environmental conservation law;

(e) To conduct investigations, test, and obtain data with respect to research experiments and demonstrations, and to collect and disseminate information regarding the purposes to be achieved pursuant to this article;

(f) To accept grants or funds for purposes of administration and enforcement of this article. Notwithstanding any other provision of law to the contrary, the president is hereby authorized to accept grants or funds, including funds directed through negotiated settlements or consent orders pursuant to this article. All funds accepted by the president for the purposes of this article shall be deposited in the efficiency standards administration account established by the New York state energy research and development authority and maintained in a segregated account in the custody of the commissioner of taxation and finance. All expenditures from the efficiency standards administration...
account pursuant to this article shall be made by the New York state energy research and development authority to carry out studies, investigations, research, expenses to provide for expert witness, consultant, enforcement, administrative and legal fees, including disbursements to the department of state to support enforcement activities authorized by the secretary pursuant to this section, and other related expenses pursuant to this article. All deposits made to the efficiency standards administration account made by the New York state energy research and development authority, all funds maintained in the efficiency standards administration account, and disbursements therefrom, made pursuant to this article shall be subject to an annual independent audit as part of such authority’s audited financial statements, and such authority shall prepare an annual report summarizing efficiency standards administration account balance and activities for each fiscal year ending March thirty-first. In addition to submitting such report as provided in section one thousand eight hundred sixty-seven of the public authorities law, the authority shall provide such report to the secretary no later than ninety days after commencement of such fiscal year;

(g) To impose a fine and/or impose injunctive relief for any violation of this article after notice and an opportunity to be heard;

(h) The secretary and the president shall consult with the appropriate federal agencies, including, but not limited to, the federal department of energy, industry and other potentially affected parties in carrying out the provisions of this article; and

(h) To conduct investigations, in consultation with the secretary, to determine if products covered by standards adopted pursuant to this article comply with such standards; to conduct tests to determine if products covered by standards adopted pursuant to this article comply with such standards; to prepare written reports of the results of such investigations and tests; to provide such reports to the secretary; in consultation with the secretary, to negotiate settlement agreements with any person that violates the provisions of subdivision two of section 16-104 of this article, or fails to perform any duty imposed by this article, or violates or fails to comply with any rule, regulation, determination, or order adopted, made, or issued by the president or the secretary pursuant to this article, pursuant to which such person shall agree to cease such violation and to pay such civil penalty as may be specified in such agreement, the terms of which will be incorporated into a consent order signed by such person, the president, and the secretary; to consult with the secretary in connection with determinations made by the secretary pursuant to paragraph (b) of subdivision five of this section; and to cooperate with the secretary in enforcement proceedings conducted by the secretary pursuant to this article.

1-a. Notwithstanding any other provision of this article, no efficiency standard adopted pursuant to paragraph (a) of subdivision one of this section shall become effective less than one hundred eighty days after publication of the notice of adoption of such standard in the state register; no efficiency standard adopted pursuant to paragraph (b) or (c) of subdivision one of this section shall become effective less than one year after publication of the notice of adoption of such efficiency standard in the state register; no amendment of any efficiency standard adopted pursuant to this article or of any efficiency standard continued in this state pursuant to section 16-105 of this article shall become
effective less than one hundred eighty days after publication of the notice of adoption of such amendment in the state register; and no new or amended efficiency standard adopted pursuant to this article shall go into effect if federal government efficiency standards regarding such product preempt state standards unless preemption has been waived pursuant to federal law.

2. (a) On or before [June thirtieth] January first, two thousand [six] twenty-three, the [secretary, in consultation with the] president, in consultation with the secretary, shall adopt regulations in accordance with the provisions of this article establishing:
   (i) [energy] efficiency [performance] standards for new products of the types [set forth] referred to in paragraphs (a) through (n) (f), paragraphs (h) through (y), paragraphs (aa) through (jj) and paragraphs (mm) through (xx) of subdivision one of section 16-104 of this article with the exception of such paragraph (g) (incandescent reflector lamps);
   (ii) procedures for testing the [energy] efficiency of the new products [covered by] of the types referred to in paragraphs (a) through [(n)] (f) and paragraphs (h) through (xx) of subdivision one of section 16-104 of this article;
   (iii) procedures for manufacturers to certify that new products [covered under] of the types referred to in paragraphs (a) through (f) and paragraphs (h) through (xx) of subdivision one of section 16-104 of this article meet the [energy] efficiency standards to be [promulgated under this article] adopted pursuant to this article, if the president determines that such manufacturer’s certifications should be required; and
   (iv) such further matters as are necessary to insure the proper implementation and enforcement of the provisions of this article.

(b) With respect to [incandescent reflector lamps included] the types of products referred to in paragraph (g), (z) or (kk) of subdivision one of section 16-104 of this article (incandescent reflector lamps, general service lamps, and light emitting diode lamps), the [secretary, in consultation with the] president shall conduct a study by December thirty-first, two thousand twenty-three to determine whether an [energy] efficiency [performance] standard for such [product] products should be established, taking into account factors including the potential impact on electricity usage, product availability and consumer and environmental benefits. If [it is determined] the president determines based on this study that such a standard would reduce energy use and would not be preempted by the federal law, the [secretary, in consultation with the] president shall adopt regulations in accordance with the provisions of this article establishing [energy performance] efficiency standards for such [product on or before January first, two thousand eighty] products.

3. Subsequent to adopting regulations pursuant to subdivisions one and two of this section, the [secretary, in consultation with the] president, in consultation with the secretary, may amend such regulations, including increasing the stringency of the [energy] efficiency [performance] standards, provided however that no energy efficiency performance standard shall become effective for a product less than one hundred eighty days after it shall become final.

4. By March fifteenth of two thousand twenty-one, the secretary and the president shall produce a report to the governor, the speaker of the assembly, the temporary president of the senate, the chair of the assembly committee on energy and the chair of the senate committee on energy
and telecommunications on the status of regulations establishing [energy] efficiency [performance] standards pursuant to this article, which shall indicate for each product enumerated in subdivision one of section 16-104 of this article the status of the implementation of [performance] efficiency standards. The report shall also set forth the estimated potential annual reductions in energy use and potential utility bill savings resulting from adopted [performance] efficiency standards for the years two thousand twenty-five and two thousand thirty-five and the potential cumulative reductions in energy use through the year two thousand thirty-five. Such report shall be updated in the same manner by March fifteenth, two thousand twenty-six and two thousand twenty-seven and copies of such updates shall be posted by March fifteenth, two thousand twenty-eight on the websites of the authority and the department of state.

5. (a) In addition to all other powers and authority given to the secretary by this article, the secretary shall have and be entitled to exercise the following powers and duties:

(i) To request the president to conduct investigations to determine if products covered by efficiency standards adopted pursuant to this article comply with such efficiency standards; to consult with the president in connection with the president’s performance of such investigations; to request the president to conduct tests to determine if products covered by efficiency standards adopted pursuant to this article comply with such efficiency standards; and to request the president’s cooperation in connection with enforcement proceedings conducted by the secretary pursuant to this article;

(ii) To order the immediate cessation of any distribution, sale or offer for sale, lease or offer to lease, rent or offer to rent, import, or offer to import, or installation or offer of installation of any product listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, or of any product for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision one of this section, or any product that is subject to a federal efficiency standard that shall have been continued in this state pursuant to section 16-105 of this article, if the secretary, in consultation with the president, determines that such product does not meet the applicable efficiency standard or if such product does not satisfy the testing procedures or manufacturer’s certification procedures adopted pursuant to the regulations authorized by this article;

(iii) To accept grants or funds for purposes of administration and enforcement of this article;

(iv) To impose, after notice and an opportunity to be heard, civil penalties and/or injunctive relief for any violation of this article or any regulation adopted pursuant to this article. Any penalties collected by the secretary under this section shall be placed in the account established under section ninety-seven-www of the state finance law, relating to the consumer protection account; and

(v) To adopt such rules and regulations as the secretary may deem necessary or appropriate for the purpose of carrying out the powers and duties granted to the secretary by this article.

(b) The secretary may exercise the powers and authority granted to the secretary by this subdivision, or by any other provision of this article, through the consumer protection division established by the secretary pursuant to section ninety-four-a of the executive law or through such other divisions, officers, or employees of the department of state as the secretary may designate from time to time.
§ 17. The energy law is amended by adding a new section 16-107 to read as follows:

§ 16-107. Subpoenas, information and document production, enforcement procedures, referrals. 1. (a) In addition to all other powers provided by this article, the secretary or his or her designee shall have the power and authority to subpoena and require the attendance of witnesses and the production of books, papers, contracts and any other documents pertaining to any investigation or hearing conducted pursuant to this article. The secretary may issue such subpoenas on his or her own initiative or at the request of the president.  

(b) If any person refuses to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.  

(c) A subpoena issued under this subdivision shall be regulated by the civil practice law and rules, and is in addition to and not in limitation of the power to make information and document requests under subdivision two of this section.  

2. Any person that sells or offers for sale, leases or offers for lease, rents or offers for rent, or installs or offers to install, manufactures or tests in New York state any new product of a type listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article, or any new product for which efficiency standards shall have been established pursuant to paragraph (b) or (c) of subdivision one of section 16-106 of this article, or any product that is subject to federal efficiency standards that shall have been continued in this state pursuant to section 16-105 of this article, shall be obliged, on the request of the secretary or his or her designee, or the request of the president or his or her designee, to supply the secretary and/or the president with such information and documentation as may be required concerning such person's business, business practices, or business methods, or proposed business practices or methods. The obligations contained in this subdivision shall not apply to any person that sells or offers for sale, leases or offers for lease, rents or offers for rent, or installs or offers to install only products described in subdivision three of section 16-104 of this article. The power to make information and document requests is in addition to and not in limitation of the power to issue subpoenas.  

3. The secretary shall, before ordering the immediate cessation of any distribution, sale or offer for sale, lease or offer to lease, rent or offer to rent, import or offer to import, or installation or offer of installation of any product, or imposing any civil penalty, injunctive relief, or other relief pursuant to this article upon any person who is alleged to be in violation of any provision of this article or of any regulation adopted pursuant to this article, and at least ten days prior to the date set for the hearing, notify in writing and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally, or by mailing same by certified mail to the last known business address of such person, or by any method authorized by the civil practice law and rules. The hearing on such charges shall be at such time and place as the department of state shall prescribe. A hearing held by this subdivision shall be held pursuant to the state administrative procedure act, and any applicable regulations adopted by the secretary.
4. A final action of the secretary in imposing a civil penalty, or other order, may be subject to review by a proceeding instituted under article seventy-eight of the civil practice law and rules.

5. In addition to all other powers provided by this article, the secretary and the president, are authorized, individually or jointly, to refer the results of any investigation conducted by the president pursuant to this article to the attorney general and to request the attorney general to institute, in the name of the secretary and/or the president, an action or proceeding to enforce the provisions of this article. The attorney general shall, at the request of the secretary or president, or may, on his or her own initiative, institute proceedings to enforce the provisions of this article including the imposition of civil penalties or injunctive relief. Nothing in this subdivision shall limit or impair the power and authority of the secretary to conduct enforcement proceedings, to issue orders pursuant to paragraph (b) of subdivision five of section 16-106 of this article, and to impose penalties pursuant to section 16-108 of this article.

§ 18. Section 16-108 of the energy law, as added by chapter 431 of the laws of 2005, is amended to read as follows:

§ 16-108. Violations, civil liability. 1. Any person who issues:

(a) a certification that a product listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article complies with the [energy] efficiency standards for such product established by or pursuant to this article[ ];

(b) a certification that a product not listed in paragraphs (a) through (xx) of subdivision one of section 16-104 of this article complies with efficiency standards for such product established pursuant to paragraph (b) or (c) of subdivision one of section 16-104 of this article; or

(c) a certification that a product that is subject to federal efficiency standards that shall have been continued in this state pursuant to section 16-105 of this article complies with such efficiency standards, knowing that such product does not comply with [those] such efficiency standards, shall be liable for a civil penalty of not more than ten thousand dollars for each such product certified and an additional penalty of not more than ten thousand dollars for each day during which such violation continues.

2. Any person who violates the provisions of subdivision two of section 16-104 of this article, or [who] fails to perform any duty imposed by this article, or [who] violates or fails to comply with any rule, regulation, determination, or order [of] adopted, made, or issued by the president or the secretary of state promulgated pursuant to this article, shall be liable for a civil penalty of not more than five hundred dollars for each such violation and an additional civil penalty of not more than one hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation.

3. [The secretary may cause an investigation to be made of complaints received concerning violations of this article and may refer the results of such investigations to the attorney general. The attorney general shall, at the request of the secretary, or may, on his own initiative, institute proceedings to enforce the provisions of this article.]

4. An action or cause of action for the recovery of a penalty under this section may be settled or compromised in an amount to be approved by the secretary either before or after proceedings are brought to recover such penalties and prior to the entry for judgment therefor.
§ 19. The energy law is amended by adding a new section 16-109 to read as follows:

§ 16-109. Conflicts with other laws. Nothing in this article or in any regulation adopted pursuant to this article shall limit, impair, or supersede the provisions of subdivision one of section three hundred eighty-three of the executive law or the provisions of subdivision three of section 11-103 of this chapter.

§ 20. Subparagraphs 14 and 15 of paragraph (a) of subdivision 3 of section 94-a of the executive law, as added by section 21 of part A of chapter 62 of the laws of 2011, are amended and a new subparagraph 16 is added to read as follows:

(14) cooperate with and assist consumers in class actions in proper cases; [and]

(15) create an internet website or webpage pursuant to section three hundred ninety-c of the general business law[\textsuperscript{-}], as added by chapter five hundred nine of the laws of two thousand seven; and

(16) exercise such powers and duties granted to the secretary by article sixteen of the energy law as the secretary may direct, including, but not limited to: consult with such president of the New York state energy research and development authority in connection with investigations conducted by such president pursuant to article sixteen of the energy law; make determinations relating to compliance by products with the standards adopted pursuant to article sixteen of the energy law; order the immediate cessation of any distribution, sale or offer for sale, import, or installation of any product that does not meet such standards; and impose civil penalties as contemplated by article sixteen of the energy law.

§ 21. Paragraph a of subdivision 1 of section 374 of the executive law, as amended by section 96 of subpart B of part C and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

a. Two members, to be appointed by the governor, from among the commissioners of the departments of economic development, environmental conservation, corrections and community supervision, education, health, labor, mental health and social services, office of general services, division of housing and community renewal, the president of the New York state energy research and development authority, and the superintendent of financial services.

§ 22. Subdivision 3 of section 374 of the executive law, as added by chapter 707 of the laws of 1981, is amended to read as follows:

3. The council shall meet at least quarterly at the call of the chairman. Additional meetings may be called upon at least five \textsuperscript{days} days\textsuperscript{'} notice by the chairman or by petition of five members of the council.

§ 23. Subdivision 2 of section 97-www of the state finance law, as amended by section 53 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

2. Such account shall consist of all penalties received by the department of state pursuant to section three hundred ninety-nine-z of the general business law, section 16-106 of the energy law and any additional monies appropriated, credited or transferred to such account by the Legislature. Any interest earned by the investment of monies in such account shall be added to such account, become part of such account, and be used for the purposes of such account.

§ 24. A building code or other requirement applicable to commercial or residential buildings or construction may not prohibit the use of a substance allowed pursuant to the United States Environmental Protection
Agency's significant new alternatives policy to implement 42 U.S.C. 7671k, provided that such substance and the refrigeration or air conditioning system or other equipment or products utilizing such substance are designed, installed, and used in accordance with nationally recognized published standards that protect building occupant safety and reduce fire risks. Substances under review but not yet listed by the United States Environmental Protection Agency pursuant to 42 U.S.C. 7671k may be allowed for use provided that such substance has a lower global warming potential than alternative substances and such substance and the refrigeration or air conditioning system or other equipment or products utilizing such substance are designed, installed, and used in accordance with nationally recognized published standards that protect building occupant safety and reduce fire risks and, if such substance contains any perfluoroalkyl and polyfluoroalkyl substances, has not been determined by the department of environmental conservation to require additional study to determine the extent of any environmental and/or health impacts that may result from such use.

§ 25. This act shall take effect immediately; provided, however, that sections six through twenty-four of this act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the amendments to subdivision 4 of section 16-106 of the energy law made by section sixteen of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on or before its effective date are hereby authorized to be made and completed on or before such effective date.
AN ACT to amend the energy law, in relation to enacting the "all-electric building act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "all-electric building act".

§ 2. Section 11-102 of the energy law is amended by adding a new subdivision 17 to read as follows:

17. "All-electric ready." A building, project, or portion thereof that contains electrical systems and designs that provide sufficient capacity for a future retrofit of a mixed-fuel building to an all-electric building, including sufficient space, drainage, electrical conductors or raceways, bus bar capacity, and overcurrent protective devices for such retrofit. The state fire prevention and building code council shall promulgate guidelines for an electric-ready building on or before January first, two thousand twenty-four.

§ 3. Section 11-104 of the energy law is amended by adding three new subdivisions 7, 8 and 9 to read as follows:

7. To support the goal of zero on-site greenhouse gas emissions and help achieve the state’s clean energy and climate agenda, including but not limited to greenhouse gas reduction requirements set forth within

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.
chapter one hundred six of the laws of two thousand nineteen, also known
as the New York state climate leadership and community protection act,
the code shall prohibit infrastructure, building systems, or equipment
used for the combustion of fossil fuels in new construction statewide no
later than December thirty-first, two thousand twenty-three if the
building is less than seven stories and July first, two thousand twen-
ty-seven if the building is seven stories or more.

8. Notwithstanding the provisions of subdivision seven of this
section, the state fire prevention and building code council may exempt
systems for emergency back-up power, or buildings specifically desig-
nated for occupancy by a commercial food establishment, laboratory,
laundromat, hospital, or crematorium, but in doing so shall seek to
minimize emissions and maximize health, safety, and fire-protection. In
such cases, the code shall limit the infrastructure, building systems,
or equipment used for the combustion of fossil fuels to the system and
area of a building for which a prohibition on infrastructure, building
systems, or equipment used for the combustion of fossil fuels is infea-
sible. To the fullest extent feasible, the code shall require that the
area or service within the project where infrastructure, building
systems, or equipment used for the combustion of fossil fuels are
installed shall be all-electric ready. Financial considerations shall
not be sufficient basis to determine physical or technical infeasibil-
ity. Exemptions or waivers provided under this subdivision shall be
reviewed during each major code update cycle to determine whether they
are still needed.

9. Nothing in this section shall be interpreted or otherwise construed
as preempting a municipality from prohibiting infrastructure, building
systems, or equipment that uses or combusts fossil fuels.

§ 4. The energy law is amended by adding a new section 11-111 to read
as follows:
§ 11-111. Additional reporting. On or before February first, two
thousand twenty-four, the department of public service, the division of
housing and community renewal, the department of state, and the New York
state energy research and development authority shall report jointly to
the governor, the temporary president of the senate, the minority leader
of the senate, the speaker of the assembly, and the minority leader of
the assembly, regarding what changes to electric rate designs, new or
existing subsidy programs, policies, or laws are necessary to ensure
that subdivisions seven and eight of section 11-104 of this article do
not diminish the production of affordable housing or the affordability
of electricity for customers in all-electric buildings. For the purpose
of this subdivision, "affordability of electricity" shall mean that
electricity does not cost more than six percent of a residential custom-
er's income.

§ 5. This act shall take effect immediately.
A LOCAL LAW

To amend the New York city charter and the administrative code of the city of New York, in relation to the commitment to achieve certain reductions in greenhouse gas emissions by 2050

Be it enacted by the Council as follows:

Section 1. Chapter 26 of the New York city charter is amended by adding a new section 651 to read as follows:

§ 651. Office of building energy and emissions performance. a. There shall be in the department an office of building energy and emissions performance. The office shall be headed by a director, who is a registered design professional, who shall be appointed by and shall report to the commissioner. The duties of the office shall include, but not be limited to:

1. Overseeing implementation of building energy and emissions performance laws and policies for existing buildings, new construction and major renovations;

2. Establishing or administering protocols for assessing annual energy use in buildings;

3. Monitoring buildings’ energy use and emissions, and reviewing building emissions assessment methodologies, building emissions limits, goals and timeframes to further the goal of
achieving a 40 percent reduction in aggregate greenhouse gas emissions from covered buildings by calendar year 2030, relative to such emissions for the calendar year 2005;

4. Creating an online portal for the submission of annual building emissions assessments by owners;

5. Receiving and validating annual building emissions assessments;

6. Auditing building emissions assessments and inspecting covered buildings, as necessary, to ensure proper reporting;

7. Determining recommended penalties, including minimum penalties, for buildings that are noncompliant with applicable emissions limits;

8. Reviewing applications for alternative methods of compliance with building emissions limits, including adjustments of emissions limits, deductions for the purchase of greenhouse gas offsets or renewable energy credits, deductions for the use of distributed energy resources, and adjustments for special categories of buildings or for special use and occupancies;

9. Working in close coordination with the mayor’s office of long-term planning and sustainability; receiving advice and recommendations, as applicable, from the advisory board established pursuant to section 28-320.2 of the administrative code; and

10. Ensuring the participation and cooperation of agencies, including but not limited to the department of environmental protection, the department of housing preservation and development and the department of citywide administrative services. Such participation and cooperation shall include, but not be limited to, detailing agency staff to assist office staff consistent with agency and office functions and reporting to the office on building energy performance issues and related enforcement efforts.
§ 2. Subdivision e of section 24-802 of the administrative code of the city of New York, as added by local law number 22 for the year 2008, is amended to read as follows:

e. "City government operations" means [operations described in the Government Inventory Methodology and the Government Inventory Results sections of the Inventory of New York City Greenhouse Gas Emissions, dated April 2007] operations, facilities, and other assets that are owned or leased by the city for which the city pays all or part of the annual energy bills.

§ 3. Paragraph (1) of subdivision a of section 24-803 of the administrative code of the city of New York, as amended by local law number 66 for the year 2014, is amended to read as follows:

(1) Reduction of emissions citywide. There shall be, at minimum, a [thirty] 40 percent reduction in citywide emissions by calendar year 2030, and an [eighty] 80 percent reduction in citywide emissions by calendar year 2050, relative to such emissions for the base year for citywide emissions.

§ 4. Subdivision b of section 24-803 of the administrative code of the city of New York, as added by local law number 22 for the year 2008, is amended to read as follows:

b. (1) Reduction of emissions from city government operations. There shall be, at minimum, a [thirty] 40 percent reduction in city government emissions by [calendar] fiscal year [2017] 2025, and a 50 percent reduction in city government emissions by calendar year 2030, relative to such emissions for the base year for city government emissions.

(2) The emissions reduction required by paragraph [one] 1 of this subdivision shall be achieved through the applicable policies, programs and actions included in PlaNYC, energy efficiency retrofits, and any additional policies, programs and actions to reduce greenhouse gas emissions that contribute to global warming, including methods to ensure equitable investment in environmental justice communities that preserve a minimum level of benefits for all communities
and do not result in any localized increases in pollution. If the office determines that such emissions reduction is not feasible despite the best efforts of city government operations, such office shall report such findings and make recommendations with respect to policies, programs and actions that may be undertaken to achieve such reductions.

(3) Reduction of emissions by the New York city housing authority. The New York city housing authority shall make efforts to reduce greenhouse gas emissions by 40 percent by the year 2030 and 80 percent by the year 2050, relative to such emissions for calendar year 2005, for the portfolio of buildings owned or operated by the New York city housing authority. If the office determines that such emissions reduction is not feasible despite the best efforts of city government operations, such office shall report such findings and make recommendations with respect to policies, programs and actions that may be undertaken to achieve such reductions.

§ 5. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 320 to read as follows:

ARTICLE 320
BUILDING ENERGY AND EMISSIONS LIMITS

§ 28-320.1 Definitions. As used in this article, the following terms shall have the following meanings:

BUILDING EMISSIONS. The term “building emissions” means greenhouse gas emissions as expressed in metric tons of carbon dioxide equivalent emitted as a result of operating a covered building and calculated in accordance with rules promulgated by the department in consultation with the mayor’s office of long term planning and sustainability. The term “building emissions” shall not include greenhouse gas emissions emitted during a local state of emergency declared by the mayor pursuant to section 24 of the executive law or a state of emergency declared by the governor pursuant to sections 28 of the executive law, where such local or state emergency has an impact on building emissions.

BUILDING EMISSIONS INTENSITY. The term “building emissions intensity” means, for a covered building, the number obtained by dividing the building emissions by the gross floor area for such building, expressed in metric tons of carbon dioxide equivalent per square foot per year.
CARBON DIOXIDE EQUIVALENT. The term “carbon dioxide equivalent” means the metric used to compare the emissions of various greenhouse gases based upon their global warming potential as defined in the Intergovernmental Panel on Climate Change Fifth Assessment Report (2014).

CITY BUILDING. The term “city building” means a building that is owned by the city or for which the city regularly pays all of the annual energy bills.

Exception: The term “city building” shall not include any senior college in the city university of New York system.

CLEAN DISTRIBUTED ENERGY RESOURCE. The term “clean distributed energy resource” means a distributed energy resource that (i) uses any of the following sources to generate electricity: hydropower, solar photovoltaics, geothermal wells or loops, tidal action, waves or water currents, and wind; or (ii) is designed and operated to store energy, including, but not limited to, batteries, thermal systems, mechanical systems, compressed air, and superconducting equipment.

COVERED BUILDING. The term “covered building” means, as it appears in the records of the department of finance, (i) a building that exceeds 25,000 gross square feet or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet (9290 m²), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet (9290 m²).

Exceptions:

1. An industrial facility primarily used for the generation of electric power or steam.

2. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than two dwelling units, as certified by a registered design professional to the department.

3. A city building.

4. A housing development or building on land owned by the New York city housing authority

5. A rent regulated accommodation.

6. The real estate owned by any religious corporation located in the city of New York as now constituted, actually dedicated and used by such corporation exclusively as a place of public worship.
7. Real property owned by a housing development fund company organized pursuant to the business corporation law and article eleven of the private housing finance law.

**DISTRIBUTED ENERGY RESOURCE.** The term “a distributed energy resource” means a resource comprised of one or multiple units capable of generating or storing electricity, all at a single location that is directly or indirectly connected to an electric utility distribution system. The resource may serve all or part of the electric load of one or more customers at the same location, and it may simultaneously or alternatively transmit all or part of the electricity it generates or stores onto the electric distribution system for sale to or use by other customers at other locations.

**GREENHOUSE GAS.** The term “greenhouse gas” means a unit of greenhouse gas, including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

**GREENHOUSE GAS OFFSET.** The term “greenhouse gas offset” means a credit representing one metric ton of carbon dioxide equivalent emissions reduced, avoided, or sequestered by a project from a measured baseline of emissions and which has been verified by an independent, qualified third party in accordance with offset standards referenced by rules of the department.

**FINANCIAL HARDSHIP (OF A BUILDING).** The term “financial hardship (of a building)” means a building shall be considered to be subject to financial hardship where, for the combined two years prior to the application for an adjustment to annual building emissions limit pursuant to section 28-320.7, the building:

1. Had arrears of property taxes or water or wastewater charges that resulted in the property’s inclusion on the department of finance’s annual New York city tax lien sale list;

2. Is exempt from real property taxes pursuant to sections 420-a, 420-b, 446 or 462 of the real property tax law and applicable local law and the owner had negative revenue less expenses as certified to the department by a certified public accountant, or by affidavit under penalties of perjury; or

3. Had outstanding balances under the department of housing preservation and development's emergency repair program that resulted in the property’s inclusion on the department of finance’s annual New York city tax lien sale list.

**METRIC TONS OF CARBON DIOXIDE EQUIVALENT.** The term “metric tons of carbon dioxide equivalent” means the global standard unit in carbon accounting to quantify greenhouse gas emissions, also expressed as tCO₂e.

**RENEWABLE ENERGY CREDIT.** The term “renewable energy credit” means a certificate representing the environmental, social and other non-power attributes of one megawatt-hour of electricity generated from a renewable energy resource, which certificate is recognized and
tradable or transferable within national renewable energy markets or the New York generation attribute tracking system. This term also means the environmental, social, and other non-power attributes of one megawatt-hour of electricity generated from a hydropower resource that does not trade or transfer renewable energy certificates for those hydropower resources in any renewable energy market or via the New York generation attribute tracking system, provided that the hydropower resource owner certifies the amount of energy produced in each reporting year and that it has not sold the non-power attributes equal to its energy production more than once.

RENT REGULATED ACCOMMODATION. The term “rent regulated accommodation” means a building (i) containing one or more dwelling units with a legal regulated rent pursuant to the emergency tenant protection act of 1974, the rent stabilization law of 1969 or the local emergency housing rent control act of 1962, (ii) containing one or more dwelling units required by law to be registered and regulated pursuant to the emergency tenant protection act of 1974 or the rent stabilization law of 1969, (iii) buildings developed with subsidies received pursuant to section 1701q of title 12 of the United States code and (iv) buildings participating in a project-based assistance program pursuant to section 1473f of title 42 of the United States code.

§ 28-320.2 Advisory board. There shall be an advisory board convened, by the office of building energy and emissions performance upon the effective date of this article, in January of 2029 and in January of 2039, to provide advice and recommendations to the commissioner and to the mayor’s office of long term planning and sustainability relating to effectively reducing greenhouse gas emissions from buildings. Such recommendations shall include, but not be limited to:

1. A report to be delivered to the mayor and
1.1. An approach for buildings to submit energy use or greenhouse gas emissions and other information for the purpose of assessing energy performance of covered buildings;

1.2. A methodology that includes the metric of measure, adjustments to the metric, the approach to comparing the output to a benchmark, alternative compliance paths, credit for beneficial electrification and distributed energy resources, and an approach for a trading mechanism as described in section 28-320.11;

1.3. Recommendations for addressing tenant-controlled energy usage;

1.4. Recommendations for amendments to the audit required under section 28-308.2 of the administrative code, including consideration of whether such audit should be replaced by a capital plan;

1.5 Recommendations for reducing building emissions from rent regulated accommodations;
1.6 Recommendations for allowing additional time to comply with the emissions limits for buildings converting to a new occupancy group or use with lower emissions limits or some other change in status that would affect applicability of the provisions of this article;

1.7 An evaluation of the extent to which the mayor’s 80x50 energy infrastructure pathways study is incorporated and addressed within the recommendations made pursuant to items 1.1 through 1.6 of this section; and

1.8 A reference guide to delineate the responsibilities of the building designer and owners to comply with emissions limits.

2. A report to be delivered to the mayor and the speaker of the city council no later than January 1, 2023, providing an analysis of, and any recommendations for improving, energy and emissions performance requirements for covered buildings. Such recommendations shall be targeted to achieve at least a 40 percent reduction in aggregate greenhouse gas emissions from covered buildings by calendar year 2030 relative to such emissions for the calendar year 2005. Such report shall include, but not be limited to assessments of:

2.1. Incentives for reduction of peak energy demand;

2.2. Methods to allow for staggered reporting cycles for compliance with energy and emissions performance improvements;

2.3. Methods for calculating penalties for non-compliance;

2.4. Estimated emissions reductions associated with any recommended energy performance requirements;

2.5. The economic impact, including benefits, of achieving the energy and emissions performance requirements;

2.6. Methods for achieving earlier or larger reductions from city-owned buildings;

2.7 Separate improvement targets for base building energy systems and tenant-controlled energy systems;

2.8 Methods for achieving emissions reductions from manufacturing and industrial processes; and

2.9 Methods for achieving emissions reductions from hospitals while maintaining critical care for human health and safety.

§ 28-320.2.1 Advisory board composition. Such advisory board shall be staffed with registered design professionals and be composed of 16 members including the chairperson, 8 of the members
of such advisory board shall be appointed by the mayor or the mayor’s designee, and 8 of the members of such advisory board shall be appointed by the speaker of the council. The mayor shall appoint one architect, one operating engineer, one building owner or manager, one public utility industry representative, one environmental justice representative, one business sector representative, one residential tenant representative, and one environmental advocacy organization representative. The speaker shall appoint one architect, one stationary engineer, one construction trades representative, one green energy industry representative, one residential tenant representative, one environmental justice organization representative, one environmental advocacy representative and one not for profit organization representative. The director of such office, or the designee of such director, shall serve as chairperson of the advisory board. The advisory board may convene in working groups. Such working groups may include individuals not on such advisory board to address the recommendations required by this article. The mayor shall invite the appropriate federal, state and local agencies and authorities to participate, including but not limited to the New York state energy research and development authority. Such advisory board shall convene a working group on hospitals that shall be composed of engineers, architects, and hospital industry representatives.

§ 28-320.3 Building emissions limits. Except as otherwise provided in this article, or otherwise provided by rule, on and after January 1, 2024 a covered building shall not have annual building emissions higher than the annual building emissions limit for such building as determined in accordance with this section based on the occupancy group of the building.

§ 28-320.3.1 Annual building emissions limits 2024-2029. For calendar years 2024 through 2029 the annual building emissions limits for covered buildings shall be calculated pursuant to items 1 through 10 of this section. For the purposes of such calculation the department shall provide a method for converting categories of uses under the United States environmental protection agency Portfolio Manager tool to the equivalent uses and occupancy groups set forth in this section. For a covered building with spaces classified in more than one occupancy group, the annual building emissions limit shall be the sum of the calculated values from items 1 through 10 of this paragraph, as applicable for each space.

1. For spaces classified as occupancy group A: multiply the building emissions intensity limit of 0.01074 tCO₂e/sf by the corresponding gross floor area (sf);

2. For spaces classified as occupancy group B other than as described in item 6: multiply the building emissions intensity limit of 0.00846 tCO₂e/sf by the corresponding gross floor area (sf);

3. For spaces classified as occupancy groups E and I-4: multiply the building emissions intensity limit of 0.00758 tCO₂e/sf by the corresponding gross floor area (sf);

4. For spaces classified as occupancy group I-1: multiply the building emissions intensity limit of 0.01138 tCO₂e/sf by the corresponding gross floor area (sf);
5. For spaces classified as occupancy group F: multiply the building emissions intensity limit of 0.00574 tCO$_2$/e/sf by the corresponding gross floor area (sf);

6. For spaces classified as occupancy groups B civic administrative facility for emergency response services, B non-production laboratory, Group B ambulatory health care facility, H, I-2 and I-3: multiply the building emissions intensity limit of 0.02381 tCO$_2$/e/sf by the corresponding gross floor area (sf);

7. For spaces classified as occupancy group M: multiply the building emissions intensity limit of 0.01181 tCO$_2$/e/sf by the corresponding gross floor area (sf);

8. For spaces classified as occupancy group R-1: multiply the building emissions intensity limit of 0.00987 tCO$_2$/e/sf by the corresponding gross floor area (sf);

9. For spaces classified as occupancy group R-2: multiply the building emissions intensity limit of 0.00675 tCO$_2$/e/sf by the corresponding gross floor area (sf);

10. For spaces classified as occupancy groups S and U: multiply the building emissions intensity limit of 0.00426 tCO$_2$/e/sf by the corresponding gross floor area (sf).

§ 28-320.3.1.1 Greenhouse gas coefficient of energy consumption for calendar years 2024 through 2029. The annual building emissions of a covered building in accordance with this section, greenhouse gas emissions shall be calculated as follows for calendar years 2024 through 2029:

1. Utility electricity consumed on the premises of a covered building that is delivered to the building via the electric grid shall be calculated as generating 0.000288962 tCO$_2$/e per kilowatt hour, provided, however, that the department, in consultation with the office of long term planning and sustainability, shall promulgate rules governing the calculation of greenhouse gas emissions for campus-style electric systems that share on-site generation but make use of the utility distribution system and for buildings that are not connected to the utility distribution system.

2. Natural gas combusted on the premises of a covered building shall be calculated as generating 0.00005311 tCO$_2$/e per kbtu.

3. #2 fuel oil combusted on the premises of a covered building shall be calculated as generating 0.00007421 tCO$_2$/e per kbtu.

4. #4 fuel oil combusted on the premises of a covered building shall be calculated as generating 0.00007529 tCO$_2$/e per kbtu.

5. District steam consumed on the premises of a covered building shall be calculated as generating 0.00004493 tCO$_2$/e per kbtu.
6. The amount of greenhouse gas emissions attributable to other energy sources, including but not limited to distributed energy resources, shall be determined by the commissioner and promulgated into rules of the department.

§ 28-320.3.2 Building emissions limits for calendar years 2030 through 2034. For calendar years 2030 through 2034 the annual building emissions limits for covered buildings shall be calculated pursuant to items 1 through 10 of this section. For the purposes of such calculation the department shall provide a method for converting categories of uses under the United States environmental protection agency Portfolio Manager tool to the equivalent uses and occupancy groups set forth in this section. For a covered building with spaces classified in more than one occupancy group, the annual building emissions limit shall be the sum of the calculated values from items 1 through 10 of this paragraph, as applicable for each space. The department may establish different limits, set forth in the rules of the department, where the department determines that different limits are feasible and in the public interest. Where such limits are set by rule, the average emission limits for all covered buildings shall not be less restrictive than the average emissions impact of the building emissions limits outlined in items 1 through 10 of this section. The advisory board and the office of long term planning and sustainability shall provide advice and recommendation regarding such limits.

1. For spaces classified as occupancy group A: multiply the building emissions intensity limit of 0.00420 tCO₂e/sf by the corresponding gross floor area (sf);

2. For spaces classified as occupancy group B other than as described in item 6: multiply the building emissions intensity limit of 0.00453 tCO₂e/sf by the corresponding gross floor area (sf);

3. For spaces classified as occupancy groups E and I-4: multiply the building emissions intensity limit of 0.00344 tCO₂e/sf by the corresponding gross floor area (sf);

4. For spaces classified as occupancy group I-1: multiply the building emissions intensity limit of 0.00598 tCO₂e/sf by the corresponding gross floor area (sf);

5. For spaces classified as occupancy group F: multiply the building emissions intensity limit of 0.00167 tCO₂e/sf by the corresponding gross floor area (sf);

6. For spaces classified as occupancy groups B civic administrative facility for emergency response services, B non-production laboratory, Group B ambulatory health care facility, H, I-2 or I-3: multiply the building emissions intensity limit of 0.01193 tCO₂e/sf by the corresponding gross floor area (sf);

7. For spaces classified as occupancy group M: multiply the building emissions intensity limit of 0.00403 tCO₂e/sf by the corresponding gross floor area (sf);
8. For spaces classified as occupancy group R-1: multiply the building emissions intensity limit of 0.00526 tCO₂e/sf by the corresponding gross floor area (sf);

9. For spaces classified as occupancy groups R-2: multiply the building emissions intensity limit of 0.00407 tCO₂e/sf by the corresponding gross floor area (sf);

10. For spaces classified as occupancy groups S and U: multiply the building emissions intensity limit of 0.00110 tCO₂e/sf by the corresponding gross floor area (sf).

§ 28-320.3.2.1 Greenhouse gas coefficients of energy consumption for calendar years 2030 through 2034. For the purposes of calculating the annual building emissions of a covered building in accordance with this section, the amount of greenhouse gas emissions attributed to particular energy sources shall be determined by the commissioner and promulgated into rules of the department by no later than January 1, 2023. The commissioner shall consult with the advisory board required by this article to develop such greenhouse gas coefficients for utility electricity consumption. When developing such coefficient, the commissioner shall consider factors including, but not limited to, the best available New York state energy research and development authority and State Energy Plan forecasts for Zone J for the end of the compliance period and beneficial electrification.

§ 28-320.3.4 Building emissions limits for calendar years 2035 through 2050. No later than January 1, 2023, the commissioner shall establish by rule annual building emissions limits and building emissions intensity limits applicable for calendar years 2035 through 2039 and building emissions limits and building emissions intensity limits applicable for calendar years 2040 through 2049. Such limits shall be set to achieve an average building emissions intensity for all covered buildings of no more than 0.0014 tCO₂e/sf/yr by 2050.

§ 28-320.3.5 Building emissions limits on and after calendar year 2050. No later than January 1, 2023 the commissioner shall establish by rule annual building emissions limits and building emissions intensity limits applicable for calendar years commencing on and after January 1, 2050. Such limits shall achieve an average building emissions intensity for all covered buildings of no more than 0.0014 tCO₂e/sf/yr.

§ 28-320.3.6 Deductions from reported annual building emissions. The department may authorize a deduction from the annual building emissions required to be reported by an owner pursuant to section 28-320.3 where the owner demonstrates the purchase of greenhouse gas offsets or renewable energy credits, or the use of clean distributed energy resources, in accordance with this section.

§ 28-320.6.1 Deductions from reported annual building emissions for renewable energy credits. A deduction from the reported annual building emissions shall be authorized equal to the number of renewable energy credits purchased by or on behalf of a building owner, provided (i) the renewable energy resource that is the source of the renewable energy credits is considered by the New York independent system operator to be a capacity resource located in or directly deliverable
into zone J load zone for the reporting calendar year; (ii) the renewable energy credits are solely owned and retired by, or on behalf of, the building owner; (iii) the renewable energy credits are from the same year as the reporting year; and (iv) the building that hosts the system producing the energy does not receive a deduction under § 28-320.6.3. Covered buildings claiming deductions for renewable energy credits under this section must provide the department with the geographic location of the renewable energy resource that created the renewable energy credits. The department, in consultation with the mayor’s office of long term planning and sustainability, shall promulgate rules to implement this deduction.

§ 28-320.3.6.2 Deductions from reported annual building emissions for purchased greenhouse gas offsets. For calendar years 2024 through 2029, a deduction shall be authorized for up to 10 percent of the annual building emissions limit. Such a deduction shall be authorized only where within the reporting calendar year, greenhouse gas offsets equivalent to the size of the deduction as measured in metric tons of carbon dioxide equivalent and generated within the reporting calendar year have been (i) purchased by or on behalf of the owner in accordance with an offset standard referenced by rules of the department, (ii) publicly registered in accordance with such offset standard, and (iii) retired or designated to the department for retirement. Such greenhouse gas offsets must exhibit environmental integrity principles, including additionality, in accordance with rules promulgated by the department in consultation with the office of long term planning and sustainability. For the purposes of this section, additionality means a requirement that an offset project is not already required by local, national or international regulations. Prior to the department promulgation of rules, the department shall consult the advisory board on environmental justice as established in local law 64 of 2017.

§ 28-320.3.6.3 Deductions from reported annual building emissions for clean distributed energy resources. For calendar years 2024 through 2029, a deduction from the reported annual building emissions shall be authorized based upon the calculated output of a clean distributed energy resource located at, on, in, or directly connected to the building subject to the report. The department shall promulgate rules to set forth how such deduction shall be calculated, in accordance with the following:

1. For a clean distributed energy resource that generates electricity, the department shall establish separate calculations for each type of commercially available clean distributed energy resource, which shall not be revised more frequently than once every three years.

2. For a clean distributed energy resource that stores electricity, the deduction shall be based on the size of the resource and its ability to reduce greenhouse gas emissions during designated peak periods.

§ 28-320.3.7 Reports. By May 1, 2025, and by May 1 of every year thereafter, the owner of a covered building shall file with the department a report, certified by a registered design professional, prepared in a form and manner and containing such information as specified in rules of the department, that for the previous calendar year such building is either:

1. In compliance with the applicable building emissions limit established pursuant to section 28-320.3; or
2. Not in compliance with such applicable building emissions limit, along with the amount by which such building exceeds such limit.

§ 28-320.3.7.1 Extension of time to file report. An owner may apply for an extension of time to file an annual report required by section 28-320.3.7 in accordance with this section and the rules of the department. An extension may be granted where the owner is unable to file the certified report by the scheduled due date despite such owner’s good faith efforts, as documented in such application. An extension granted pursuant to this section shall not modify the owner’s obligation to comply with the applicable emission limits for such calendar year.

§ 28-320.3.8 Continuing requirements. In 2055, the office of building energy and emissions performance shall prepare and submit to the mayor and the speaker of the council recommendations whether to repeal or amend any of the requirements of this article.

§ 28-320.3.9 Extension for certain income-restricted housing. This section is applicable to covered buildings that are owned by a limited-profit housing company organized under article 2 of the private housing finance law, or contain one or more dwelling units for which occupancy or initial occupancy is restricted based upon the income of the occupant or prospective occupant thereof as a condition of a loan, grant, tax exemption, or conveyance of property from any state or local governmental agency or instrumentality pursuant to the private housing finance law, the general municipal law, or section 420-c of the real property tax law. Such buildings are exempted from the annual building emissions limits set forth in section 28-320.3.1 and 28-320.3.2 and from any applicable reporting requirements.

§ 28-320.3.10 Changes in building status. The department may establish by rule procedures for a building to apply for additional time to comply with the emissions limits when such building converts to a new occupancy group or use with lower emissions limits, or undergoes a change affecting the applicability of this article to such building.

§ 28-320.4 Assistance. The office of building energy and emissions performance shall establish and maintain a program for assisting owners of covered buildings in complying with this article, as well as expand existing programs established to assist owners in making energy efficiency and renewable energy improvements. These programs shall be made available to assist building owners without adequate financial resources or technical expertise.

§ 28-320.5 Outreach and education. The office of building energy and emissions performance shall establish and engage in outreach and education efforts to inform building owners about building emissions limits, building emissions intensity limits and compliance with this article. The materials developed for such outreach and education shall be made available on the office’s website. Such outreach shall include a list of city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which buildings reasonably could be eligible. The office of building energy and emissions performance shall also provide outreach, education, and training opportunities for buildings’ maintenance and operations staff.
§ 28-320.6 Penalties. An owner of a covered building who has submitted a report pursuant to section 28-320.3.7 which indicates that such building has exceeded its annual building emissions limit shall be liable for a civil penalty of not more than an amount equal to the difference between the building emissions limit for such year and the reported building emissions for such year, multiplied by $268.

§ 28-320.6.1 Determination of penalty. In considering the amount of the civil penalty to be imposed pursuant to this article, a court or administrative tribunal shall give due regard to aggravating or mitigating factors including:

1. The respondent’s good faith efforts to comply with the requirements of this article, including investments in energy efficiency and greenhouse gas emissions reductions before the effective date of this article;

2. The respondent’s history of compliance with this article;

3. The respondent’s compliance with the conditions of any adjustment to the applicable building emissions limit, issued by the department pursuant to section 28-320.7;

4. Whether the non-compliance was directly related to unexpected and unforeseeable events or conditions during the calendar year outside the control of the respondent;

5. The respondent’s access to financial resources; and 6. Whether payment of such penalty would impact the operations of facilities critical to human life or safety.

§ 28-320.6.2 Civil penalty for failure to file report. It shall be unlawful for the owner of a covered building to fail to submit an annual report as required by section 28-320.3.7 on or before the applicable due date. An owner of a covered building subject to a violation for failure to file a report shall be liable for a penalty of not more than an amount equal to the gross floor area of such covered building, multiplied by $0.50, for each month that the violation is not corrected within the 12 months following the reporting deadline; provided, however, that an owner shall not be liable for a penalty for a report demonstrating compliance with the requirements of this article if such report is filed within 60 days of the date such report is due.

§ 28-320.6.3 False statement. It shall be unlawful to knowingly make a material false statement in a report or other submission filed with the department, pursuant to this article. A violation of this section shall be a misdemeanor and subject to a fine of not more than $500,000 or imprisonment of not more than 30 days or both such fine and imprisonment. A person who violates this section shall also be liable for a civil penalty of not more than $500,000.

§ 28-320.6.4 Penalty recovery. Civil penalties provided for by this article may be recovered in a proceeding before an administrative tribunal within the jurisdiction of the office of administrative trials and hearings. Administrative summonses returnable to such tribunal for violations of this
article may be issued by the department or by an agency designated by the department. Civil penalties provided for by this article may also be recovered in an action by the corporation counsel in any court of competent jurisdiction.

§ 28-320.7. Adjustment to applicable annual building emissions limit. The department, in consultation with the mayor’s office of long term planning and sustainability or any other agency designated by the mayor, may grant an adjustment of the annual building emissions limit applicable to a covered building in existence on the effective date of this article or for which a permit for the construction of such building was issued prior to such effective date, provided that the owner is complying with the requirements of this article to the maximum extent practicable.

1. Such an adjustment may be granted upon a specific determination that:

1.1. Capital improvements are necessary for strict compliance with the limit set forth in section 28-320.3 and it is not reasonably possible to make such improvements due to (i) a constraint imposed by another provision of law including but not limited to designation as a landmark, landmark site, interior landmark, or within a historic district pursuant to chapter 3 of title 25 of the administrative code, or (ii) a physical condition of the building or building site including but not limited to lack of access to energy infrastructure, space constraints, or lack of access to a space within a building covered by a lease in existence on the effective date of this section;

1.2. The owner has made a good faith effort to purchase greenhouse gas offsets to comply with section 28-320.3 but a sufficient quantity is not available at a reasonable cost; and

1.3. The owner has availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate.

2. Such an adjustment may be granted upon a specific determination that:

2.1. The cost of financing capital improvements necessary for strict compliance with the limit set forth in section 28-320.3 would prevent the owner of a building from earning a reasonable financial return on the use of such building or the building is subject to financial hardship as defined in this article. In evaluating the ability of an owner to earn a reasonable financial return, the department may consider future savings expected from such capital improvements;

2.2. The owner is not eligible for any program funded by the city or enabled by a local law that provides financing for the purpose of energy reduction or sustainability measures. Proof of ineligibility for financing must be demonstrated by rejection from any such program funded by the city or enabled by a local law or an affidavit explanation why such owner could not reasonably participate in such programs;
2.3. The owner has made a good faith effort to purchase greenhouse gas offsets or renewable energy credits to comply with section 28-320.3 but a sufficient quantity is not available at a reasonable cost; and

2.4. The owner has availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate.

§ 28-320.7.1 Effective period. An adjustment granted pursuant to item 1 of section 28-320.7 may be effective for a period of not more than three calendar years. An adjustment granted pursuant to item 2 of such section may be effective for a period of not more than one calendar year.

§ 28-320.7.2 Application. An application for such an adjustment shall be made in the form and manner determined by the department and certified by a registered design professional.

§ 28-320.8 Adjustment to applicable annual building emissions limit for calendar years 2024-2029. The department may grant an adjustment of the annual building emissions limit for calendar years 2024 through 2029 applicable to a covered building in existence on the effective date of this article where such covered building emissions in calendar year 2018 exceeds the building emissions limit as prescribed by section 28-320.3.1 by more than 40 percent, as reported to the department by a registered design professional. The adjustment shall result in a required building emissions limit that is 70 percent of the calendar year 2018 building emissions for the covered building. Such adjustment may be granted where:

1. The owner of a covered building demonstrates that the building emissions in excess of the building emissions limit is attributable to special circumstances related to the use of the building, including but not limited to 24 hour operations, operations critical to human health and safety, high density occupancy, energy intensive communications technologies or operations, and energy-intensive industrial processes;

2. The owner of a covered building demonstrates that the energy performance of the covered building is equivalent to a building in compliance with the New York city energy conservation code in effect on January 1, 2015; and

3. The owner of the covered building has submitted a plan to the department setting forth a schedule of alterations to the covered building or changes to the operations and management of the covered building sufficient to ensure that the covered building will be in compliance with the annual building emissions limits for calendar years 2030 through 2034, as required by section 28-320.3.2.
§ 28-320.8.1 Effective period. An adjustment granted pursuant to section 28-320.8 may be effective for the reporting years 2025 through 2030, as prescribed by section 28-320.3.7, provided that the certificate of occupancy has not been amended after December 31, 2018.

§ 28-320.8.1.1 Extension of effective period. The commissioner may also grant an extension of the effective period of the adjustment to applicable annual building emissions limit for calendar years 2030-2035, as prescribed by section 28-320.3.8. Such extension may be granted upon submission of a schedule of alterations to the covered building or changes to the operations and management of the covered building in accordance with section 28-320.8 sufficient to ensure that by 2035 the covered building will comply with a required building emissions limit that is 50 percent of the reported 2018 building emissions for the covered building.

§ 28-320.8.2 Application. An application for an adjustment shall be submitted to the department before July 1, 2021 in the form and manner determined by the department and certified by a registered design professional.

§ 28-320.9 Adjustment to applicable annual building emissions limit for not-for-profit hospitals and healthcare facilities. The department shall grant an adjustment of the annual building emissions limits for calendar years 2024-2029 and 2030-2034 where:

1. The building is classified as a not-for-profit hospital, not-for-profit health center, or not-for-profit HIP center, in existence on the effective date of this article; and

2. By no later than July 21, 2021, the owner of the covered building submits an application to the department for such adjustment in a form and manner prescribed by the department.

For calendar years 2024 through 2029, the adjustment shall result in the covered building being subject to an emissions limit that is 85 percent of the calendar 2018 building emissions for such covered building. For calendar years 2030 through 2034, the adjustment shall result in the covered building being subject to an emissions limit that is 70 percent of the calendar 2018 building emissions for such covered building.

§ 28-320.10 Fee schedule. The department may establish by rule a schedule of fees that shall be paid upon the filing of a report or an application for an adjustment to the applicable building emissions limit pursuant to this article. Such schedule may include a fee for the late filing of a report.

§ 28-320.11 Carbon trading study. The office of long term planning and sustainability shall conduct a study on the feasibility of a citywide trading scheme for greenhouse gas emissions from buildings and submit a report and implementation plan with the findings of such study to the mayor and the speaker of the council no later than January 1, 2021. Such study shall include methods to ensure equitable investment in environmental justice communities that preserve a minimum level of benefits for all covered buildings and do not result in any localized increases in pollution. Such study shall also include an approach to a marketplace for credit trading, pricing
mechanisms, credit verification, and mechanisms for regular improvement of the scheme. Such study should also consider the reports and recommendations of the advisory board.

§ 6. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 321 to read as follows:

ARTICLE 321
ENERGY CONSERVATION MEASURE REQUIREMENTS FOR CERTAIN BUILDINGS

§ 28-321.1 Definitions. As used in this article, the following terms shall have the following meanings:

COVERED BUILDING. The term “covered building” means a building (i) containing one or more dwelling units with a legal regulated rent pursuant to the emergency tenant protection act of 1974, the rent stabilization law of 1969 or the local emergency housing rent control act of 1962, (ii) containing one or more dwelling units required by law to be registered and regulated pursuant to the emergency tenant protection act of 1974 or the rent stabilization law of 1969, (iii) buildings developed with subsidies received pursuant to section 1701q of title 12 of the United States code and (iv) buildings participating in a project-based assistance program pursuant to section 1473f of title 42 of the United States code, (v) real estate owned by any religious corporation located in the city of New York as now constituted, actually dedicated and used by such corporation exclusively as a place of public worship and, as it appears in the records of the department of finance, (i) a building that exceeds 25,000 gross square feet or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet (9290 m²), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet (9290 m²).

Exceptions:

1. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than two dwelling units, as certified by a registered design professional to the department.

2. An industrial facility primarily used for the generation of electric power or steam.

3. A covered building as defined in article 320.
§ 28-321.2 Required energy conservation measures for certain buildings. A covered building must comply with either section 28-321.2.1 or section 28-321.2.2.

§ 28-321.2.1 Energy compliant buildings. The owner of a covered building shall demonstrate that, for calendar year 2024, the annual building emissions of such covered building did not exceed what the applicable annual building emissions limit would be pursuant to section 28-320.3.2 if such building were a covered building as defined in article 320 of this chapter.

§ 28-321.2.2 Prescriptive energy conservation measures. By December 31, 2024, the owner of a covered building shall ensure that the following energy conservation measures have been implemented where applicable:

1. Adjusting temperature set points for heat and hot water to reflect appropriate space occupancy and facility requirements;

2. Repairing all heating system leaks;

3. Maintaining the heating system, including but not limited to ensuring that system component parts are clean and in good operating condition;

4. Installing individual temperature controls or insulated radiator enclosures with temperature controls on all radiators;

5. Insulating all pipes for heating and/or hot water;

6. Insulating the steam system condensate tank or water tank;

7. Installing indoor and outdoor heating system sensors and boiler controls to allow for proper set-points;

8. Replacing or repairing all steam traps such that all are in working order;

9. Installing or upgrading steam system master venting at the ends of mains, large horizontal pipes, and tops of risers, vertical pipes branching off a main;

10. Upgrading lighting to comply with the standards for new systems set forth in section 805 of the New York city energy conservation code and/or applicable standards referenced in such energy code on or prior to December 31, 2024. This provision is subject to exception 1 in section 28-310.3, provided that July 1, 2010 is replaced by January 1, 2020 for the purposes of this section;

11. Weatherizing and air sealing where appropriate, including windows and ductwork, with focus on whole-building insulation;

12. Installing timers on exhaust fans; and
13. Installing radiant barriers behind all radiators.

§ 28-321.3 Reports. By May 1, 2025, an owner of a covered building shall submit a report to the department to demonstrate compliance with this section in accordance with section 28-321.3.1 or section 28-321.3.2.

§ 28-321.3.1 Energy compliant buildings reports. The owner of a covered building shall file with the department a report, certified by a registered design professional, prepared in a form and manner and containing such information as specified in rules of the department, that for calendar year 2024 such building was in compliance with the applicable building emissions limit established pursuant to section 28-320.3.2.

§ 28-321.3.2 Prescriptive energy conservation measures reports. A retro-commissioning agent, as defined in article 308, shall prepare and certify a report in a form and manner determined by the department. The report shall include such information relating to the completion of the prescriptive energy conservation measures as shall be set forth in the rules of the department including, at a minimum:

1. Project and team information:

1.1. Building address.

1.2. Experience and certification of persons performing the prescriptive energy conservation measures and any staff involved in the project.

1.3. Name, affiliation, and contact information for persons performing the prescriptive energy conservation measures, owner of building, and facility manager of building.

2. Building information:

2.1. List of all HVAC, domestic hot water, electrical equipment, lighting, and conveyance equipment types serving the covered building.

§ 28-321.4 Penalties. Penalties that may be assessed for violations of section 28-321.2 shall be determined by department rule.

§ 7. This local law takes effect 180 days after it becomes law, except that prior to such effective date the department of buildings and the office of long term planning and sustainability may take such measures as are necessary for the implementation of this local law, including the promulgation of rules.
THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on April 18, 2019 and returned unsigned by the Mayor on May 20, 2019.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 97 of 2019, Council Int. No. 1253-C of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.
Article 320: Building Energy and Emissions Limits

§ 28-320.1 Definitions.

As used in this article, the following terms shall have the following meanings:

BUILDING EMISSIONS. The term "building emissions" means greenhouse gas emissions as expressed in metric tons of carbon dioxide equivalent emitted as a result of operating a covered building and calculated in accordance with rules promulgated by the department in consultation with the mayor's office of long term planning and sustainability. The term "building emissions" shall not include greenhouse gas emissions emitted during a local state of emergency declared by the mayor pursuant to section 24 of the executive law or a state of emergency declared by the governor pursuant to section 28 of the executive law, where such local or state emergency has an impact on building emissions.

BUILDING EMISSIONS INTENSITY. The term "building emissions intensity" means, for a covered building, the number obtained by dividing the building emissions by the gross floor area for such building, expressed in metric tons of carbon dioxide equivalent per square foot per year.

CAPACITY RESOURCE. The term "capacity resource" means a facility that has the capability to generate and transmit electrical power and sell capacity (i) by bilateral contracts, (ii) in the wholesale capacity market, or (iii) by indirect sales of capacity in the wholesale market in accordance with the schedules of rates and charges of a utility in effect pursuant to section 66 of the New York state public service law.

CARBON DIOXIDE EQUIVALENT. The term "carbon dioxide equivalent" means the metric used to compare the emissions of various greenhouse gases based upon their global warming potential as defined in the Intergovernmental Panel on Climate Change Fifth Assessment Report (2014).

CITY BUILDING. The term "city building" means a building that is owned by the city or for which the city regularly pays all of the annual energy bills, or a cultural institution that is in the Cultural Institutions Group as determined by the department of cultural affairs for which the city regularly pays all or part of the annual energy bills.

Exception: The term "city building" shall not include any senior college in the city university of New York system.

CLEAN DISTRIBUTED ENERGY RESOURCE. The term "clean distributed energy resource" means a distributed energy resource that (i) uses any of the following sources to generate electricity: hydropower, solar photovoltaics, geothermal wells or loops, tidal action, waves or water currents, or wind; or (ii) is designed and operated to store energy, including but not limited to batteries, thermal systems, mechanical systems, compressed air, and superconducting equipment.

COVERED BUILDING. The term "covered building" means, as it appears in the records of the department of finance, (i) a building that exceeds 25,000 gross square feet (2322.5 m²) or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet 4645 m², or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet 4645 m².

Exceptions:

1. An industrial facility primarily used for the generation of electric power or steam.
2. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than 25,000 gross square feet (2322.5 m²), as certified by a registered design professional to the department.
3. A city building.
4. A housing development or building on land owned by the New York city housing authority.
5. A rent regulated accommodation.
6. A building whose main use or dominant occupancy is classified as occupancy group A-3 religious house of worship.
7. Real property owned by a housing development fund company organized pursuant to the business corporation law and article eleven of the private housing finance law.
8. A building that participates in a project-based federal housing program.
DISTRIBUTED ENERGY RESOURCE. The term "distributed energy resource" means a resource comprised of one or multiple units capable of generating or storing electricity, all at a single location that is directly or indirectly connected to an electric utility transmission and distribution system. The resource may serve all or part of the electric load of one or more customers at the same location, and it may simultaneously or alternatively transmit all or part of the electricity it generates or stores onto the electric transmission and distribution system for sale to or use by other customers at other locations.

FINANCIAL HARDSHIP (OF A BUILDING). The term "financial hardship (of a building)" means a building that for the combined two years prior to the application for an adjustment to annual building emissions limit pursuant to section 28-320.7:

1. Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion on the department of finance’s annual New York city tax lien sale list;

2. Had been exempt from real property taxes pursuant to sections 420-a, 420-b, 446 or 462 of the real property tax law and applicable local law and the owner had negative revenue less expenses as certified to the department by a certified public accountant, or by affidavit under penalties of perjury; or

3. Had outstanding balances under the department of housing preservation and development's emergency repair program that resulted in the property's inclusion on the department of finance's annual New York city tax lien sale list.

GREENHOUSE GAS. The term "greenhouse gas" means a unit of greenhouse gas, including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

GREENHOUSE GAS OFFSET. The term "greenhouse gas offset" means a credit representing one metric ton of carbon dioxide equivalent emissions reduced, avoided, or sequestered by a project from a measured baseline of emissions and which has been verified by an independent, qualified third party in accordance with offset standards referenced by rules of the department.

METRIC TONS OF CARBON DIOXIDE EQUIVALENT. The term "metric tons of carbon dioxide equivalent" means the global standard unit in carbon accounting to quantify greenhouse gas emissions, also expressed as tCO₂e.

RENEWABLE ENERGY CREDIT. The term "renewable energy credit" means a certificate representing the environmental, social and other non-power attributes of one megawatt-hour of electricity generated from a renewable energy resource, which certificate is recognized and tradable or transferable within national renewable energy markets or the New York generation attribute tracking system. This term also means the environmental, social, and other non-power attributes of one megawatt-hour of electricity generated from a hydropower resource that does not trade or transfer renewable energy certificates for those hydropower resources in any renewable energy market or via the New York generation attribute tracking system, provided that the hydropower resource owner certifies the amount of energy produced in each reporting year and that it has not sold the non-power attributes equal to its energy production more than once.

RENT REGULATED ACCOMMODATION. The term "rent regulated accommodation" means a building in which more than 35 percent of dwelling units are required by law or by an agreement with a governmental entity to be regulated in accordance with the New York state emergency tenant protection act of 1974, the New York city rent stabilization law of 1969, or the local emergency housing rent control act of 1962.


Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2021/126 and L.L. 2023/077.

§ 28-320.2 Advisory board.

There shall be an advisory board convened by the office of building energy and emissions performance upon the effective date of this article, in January of 2029 and in January of 2039, to provide advice and recommendations to the commissioner and to the mayor's office of long term planning and sustainability relating to effectively reducing greenhouse gas emissions from buildings. Such recommendations shall include, but not be limited to:

1. A report and recommendations to be delivered to the mayor and the speaker of the city council no later than January 1, 2023 for additional or improved approaches to assessing building energy performance. Such report shall include, but not be limited to:

   1.1. An approach for buildings to submit energy use or greenhouse gas emissions and other information for the purpose of assessing energy performance of covered buildings;

   1.2. A methodology that includes the metric of measure, adjustments to the metric, the approach to comparing the output to a benchmark, alternative compliance paths, credit for beneficial electrification and distributed energy resources,
and an approach for a trading mechanism as described in section 28-320.11;

1.3. Recommendations for addressing tenant-controlled energy usage;

1.4. Recommendations for amendments to the audit required under section 28-308.2, including consideration of whether such audit should be replaced by a capital plan;

1.5. Recommendations for reducing building emissions from rent regulated accommodations;

1.6. Recommendations for allowing additional time to comply with the emissions limits for buildings converting to a new occupancy group or use with lower emissions limits or some other change in status that would affect applicability of the provisions of this article;

1.7. An evaluation of the extent to which the mayor’s 80x50 energy infrastructure pathways study is incorporated and addressed within the recommendations made pursuant to items 1.1 through 1.6 of this section; and

1.8. A reference guide to delineate the responsibilities of the building designer and owners to comply with emissions limits.

2. A report to be delivered to the mayor and the speaker of the city council no later than January 1, 2023, providing an analysis of, and any recommendations for improving, energy and emissions performance requirements for covered buildings. Such recommendations shall be targeted to achieve at least a 40 percent reduction in aggregate greenhouse gas emissions from covered buildings by calendar year 2030 relative to such emissions for the calendar year 2005. Such report shall include, but not be limited to assessments of:

2.1. Incentives for reduction of peak energy demand;

2.2. Methods to allow for staggered reporting cycles for compliance with energy and emissions performance improvements;

2.3. Methods for calculating penalties for noncompliance;

2.4. Estimated emissions reductions associated with any recommended energy performance requirements;

2.5. The economic impact, including benefits, of achieving the energy and emissions performance requirements;

2.6. Methods for achieving earlier or larger reductions from city buildings;

2.7. Separate improvement targets for base building energy systems and tenant-controlled energy systems;

2.8. Methods for achieving emissions reductions from manufacturing and industrial processes; and

2.9. Methods for achieving emissions reductions from hospitals while maintaining critical care for human health and safety.


Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2021/126 and L.L. 2023/077.

§ 28-320.2.1 Advisory board composition.

Such advisory board shall be staffed with registered design professionals and be composed of 19 members as follows: the chairperson, the speaker of the council or the speaker’s designee, the mayor or the mayor’s designee, eight members appointed by the mayor, and eight members appointed by the speaker of the council. The mayor shall appoint one architect, one engineer, one building owner or manager, one public utility industry representative, one environmental justice representative, one business sector representative, one residential tenant representative, and one environmental advocacy organization representative. The speaker shall appoint one architect, one stationary engineer, one construction trades representative, one green energy industry representative, one residential tenant representative, one environmental justice organization representative, one environmental advocacy representative and one not for profit organization representative. The director of such office, or the designee of such director, shall serve as chairperson of the advisory board. The advisory board may convene in working groups. Such working groups may include individuals not on such advisory board to address the recommendations required by this article. The mayor shall invite the appropriate federal, state and local agencies and authorities to participate, including but not limited to the New York state energy research and development authority. Such advisory board shall convene a working group on hospitals that shall be composed of engineers, architects, and hospital industry representatives.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2019/147, 7/27/2019, eff. 11/15/2019)

§ 28-320.3 Building emissions limits.
Except as otherwise provided in this article, or otherwise provided by rule, on and after January 1, 2024 a covered building shall not have annual building emissions higher than the annual building emissions limit for such building as determined in accordance with this section based on the occupancy group of the building.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.3.1 Annual building emissions limits 2024 through 2029.

For calendar years 2024 through 2029 the annual building emissions limits for covered buildings shall be calculated pursuant to items 1 through 10 of this section. For the purposes of such calculation the department shall provide a method for converting categories of uses under the United States environmental protection agency Portfolio Manager tool to the equivalent uses and occupancy groups set forth in this section. For a covered building with spaces classified in more than one occupancy group, the annual building emissions limit shall be the sum of the calculated values from items 1 through 10 of this paragraph, as applicable for each space.

1. For spaces classified as occupancy group A: multiply the building emissions intensity limit of 0.01074 tCO$_2$ e/sf by the corresponding gross floor area (sf);

2. For spaces classified as occupancy group B other than as described in item 6: multiply the building emissions intensity limit of 0.00846 tCO$_2$ e/sf by the corresponding gross floor area (sf);

3. For spaces classified as occupancy groups E and I-4: multiply the building emissions intensity limit of 0.00758 tCO$_2$ e/sf by the corresponding gross floor area (sf);

4. For spaces classified as occupancy group I-1: multiply the building emissions intensity limit of 0.01138 tCO$_2$ e/sf by the corresponding gross floor area (sf);

5. For spaces classified as occupancy group F: multiply the building emissions intensity limit of 0.00574 tCO$_2$ e/sf by the corresponding gross floor area (sf);

6. For spaces classified as occupancy groups B civic administrative facility for emergency response services, B nonproduction laboratory, Group B ambulatory health care facility, H, I-2 and I-3: multiply the building emissions intensity limit of 0.02381 tCO$_2$ e/sf by the corresponding gross floor area (sf);

7. For spaces classified as occupancy group M: multiply the building emissions intensity limit of 0.01181 tCO$_2$ e/sf by the corresponding gross floor area (sf);

8. For spaces classified as occupancy group R-1: multiply the building emissions intensity limit of 0.00987 tCO$_2$ e/sf by the corresponding gross floor area (sf);

9. For spaces classified as occupancy group R-2: multiply the building emissions intensity limit of 0.00675 tCO$_2$ e/sf by the corresponding gross floor area (sf);

10. For spaces classified as occupancy groups S and U: multiply the building emissions intensity limit of 0.00426 tCO$_2$ e/sf by the corresponding gross floor area (sf).

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2023/077, 6/11/2023, eff. 6/11/2023)

Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.3.1.1 Greenhouse gas coefficient of energy consumption for calendar years 2024 through 2029.

The annual building emissions of a covered building in accordance with this section, greenhouse gas emissions shall be calculated as follows for calendar years 2024 through 2029:

1. Utility electricity consumed on the premises of a covered building that is delivered to the building via the electric grid shall be calculated as generating 0.000288962 tCO$_2$ e per kilowatt hour or, at the owner’s option, shall be calculated based on time of use in accordance with referenced emissions factors promulgated by rules of the department. The department, in consultation with the office of long-term planning and sustainability, shall promulgate rules governing the calculation of greenhouse gas emissions for campus-style electric systems that share on-site generation but make use of the utility distribution system and for buildings that are not connected to the utility distribution system.

2. Natural gas combusted on the premises of a covered building shall be calculated as generating 0.00005311 tCO$_2$ e per kbtu.
3. #2 fuel oil combusted on the premises of a covered building shall be calculated as generating 0.00007421 \( tCO_2 \) \( e \) per kbtu.

4. #4 fuel oil combusted on the premises of a covered building shall be calculated as generating 0.00007529 \( tCO_2 \) \( e \) per kbtu.

5. District steam consumed on the premises of a covered building shall be calculated as generating 0.00004493 \( tCO_2 \) \( e \) per kbtu.

6. The amount of greenhouse gas emissions attributable to natural gas powered fuel cells shall be credited compared to the electricity grid marginal emissions factor that will be determined by the commissioner and promulgated into rules of the department.

   **Exception:** Natural gas powered fuel cells that commence operation prior to the later of January 1, 2023 or the promulgation of such rules, shall be credited compared to the electricity grid marginal emissions factor published in the most recent New York state energy research and development authority renewable energy standard program impact evaluation and clean energy standard triennial review, or a successor to such report issued by the New York state energy research and development authority.

7. The amount of greenhouse gas emissions attributable to other energy sources, including but not limited to distributed energy resources, shall be determined by the commissioner and promulgated into rules of the department.


   **Editor's note:** For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

    **§ 28-320.3.2 Building emissions limits for calendar years 2030 through 2034.**

For calendar years 2030 through 2034, the annual building emissions limits for covered buildings shall be calculated pursuant to items 1 through 10 of this section. For the purposes of such calculation the department shall provide a method for converting categories of uses under the United States environmental protection agency Portfolio Manager tool to the equivalent uses and occupancy groups set forth in this section. For a covered building with spaces classified in more than one occupancy group, the annual building emissions limit shall be the sum of the calculated values from items 1 through 10 of this paragraph, as applicable for each space. The department may establish different limits, including a different metric or method of calculation, set forth in the rules of the department, where the department determines that different limits are feasible and in the public interest. Where such limits are set by rule, the average emission limits for all covered buildings shall not be less restrictive than the average emissions impact of the building emissions limits outlined in items 1 through 10 of this section. The advisory board and the office of long-term planning and sustainability shall provide advice and recommendation regarding such limits.

1. For spaces classified as occupancy group A: multiply the building emissions intensity limit of 0.00420 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);

2. For spaces classified as occupancy group B other than as described in item 6: multiply the building emissions intensity limit of 0.00453 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);

3. For spaces classified as occupancy groups E and I-4: multiply the building emissions intensity limit of 0.00344 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);

4. For spaces classified as occupancy group I-1: multiply the building emissions intensity limit of 0.00598 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);

5. For spaces classified as occupancy group F: multiply the building emissions intensity limit of 0.00167 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);

6. For spaces classified as occupancy groups B civic administrative facility for emergency response services, B nonproduction laboratory, Group B ambulatory health care facility, H, I-2 or I-3: multiply the building emissions intensity limit of 0.01330 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);

7. For spaces classified as occupancy group M: multiply the building emissions intensity limit of 0.00403 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);

8. For spaces classified as occupancy group R-1: multiply the building emissions intensity limit of 0.00526 \( tCO_2 \) \( e/\text{sf} \) by the corresponding gross floor area (sf);
9. For spaces classified as occupancy groups R-2: multiply the building emissions intensity limit of 0.00407 tCO\(_2\) e/sf by the corresponding gross floor area (sf);

10. For spaces classified as occupancy groups S and U: multiply the building emissions intensity limit of 0.00110 tCO\(_2\) e/sf by the corresponding gross floor area (sf).


Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.3.2.1 Greenhouse gas coefficients of energy consumption for calendar years 2030 through 2034.

For the purposes of calculating the annual building emissions of a covered building in accordance with this section, the amount of greenhouse gas emissions attributed to particular energy sources shall be determined by the commissioner and promulgated into rules of the department by no later than January 1, 2023. The commissioner shall consult with the advisory board required by this article to develop such greenhouse gas coefficients for utility electricity consumption. When developing such coefficients, the commissioner shall consider factors, including but not limited to the best available New York state energy research and development authority and State Energy Plan marginal forecasts for Zone J for the end of the compliance period and beneficial electrification.


§ 28-320.3.3 [Reserved.]*

* Editor's note: L.L. 2019/097 did not include any section numbered as § 28-320.3.3; reserved at the discretion of the editor.

§ 28-320.3.4 Building emissions limits for calendar years 2035 through 2050.

No later than January 1, 2023, the commissioner shall establish by rule annual building emissions limits and building emissions intensity limits applicable for calendar years 2035 through 2039 and building emissions limits and building emissions intensity limits applicable for calendar years 2040 through 2049. Such limits shall be set to achieve an average building emissions intensity for all covered buildings of no more than 0.0014 tCO\(_2\) e/sf/yr by 2050.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.3.5 Building emissions limits on and after calendar year 2050.

No later than January 1, 2023 the commissioner shall establish by rule annual building emissions limits and building emissions intensity limits applicable for calendar years commencing on and after January 1, 2050. Such limits shall achieve an average building emissions intensity for all covered buildings of no more than 0.0014 tCO\(_2\) e/sf/yr.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.3.6 Deductions from reported annual building emissions.

The department may authorize a deduction from the annual building emissions required to be reported by an owner pursuant to section 28-320.3 where the owner demonstrates the purchase of greenhouse gas offsets or renewable energy credits, or the use of clean distributed energy resources, in accordance with this section. For such sections that limit the dates of applicability of such deductions, the department may promulgate rules to extend such deductions for each future compliance date.


Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.3.6.1 Deductions from reported annual building emissions for renewable energy credits.

A deduction from the reported annual building emissions resulting from the consumption of electricity may be authorized equal to the number of renewable energy credits purchased by or on behalf of a building owner, provided (i) the renewable energy resource that is the source of the renewable energy credits is considered by the New York independent system operator to be a capacity resource located in, or whose output directly sinks into, the zone J load zone for the reporting calendar year; (ii) the renewable energy credits are solely owned and retired by, or on behalf of, the building owner; (iii) the
renewable energy credits are from the same year as the reporting year; and (iv) the building that hosts the system producing the energy does not receive a deduction under section 28-320.3.6.3 for the same energy upon which the renewable credits are based. Covered buildings claiming deductions for renewable energy credits under this section must provide the department with the geographic location of the renewable energy resource that created the renewable energy credits. The department, in consultation with the mayor's office of long-term planning and sustainability, shall promulgate rules to implement this deduction.


**Editor's note:** For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.3.6.2 Deductions from reported annual building emissions for purchased greenhouse gas offsets.

For calendar years 2024 through 2029, a deduction shall be authorized for up to 10 percent of the annual building emissions limit. Such a deduction shall be authorized only where within the reporting calendar year, greenhouse gas offsets equivalent to the size of the deduction as measured in metric tons of carbon dioxide equivalent and generated within the reporting calendar year have been (i) purchased by or on behalf of the owner in accordance with an offset standard referenced by rules of the department, (ii) publicly registered in accordance with such offset standard, and (iii) retired or designated to the department for retirement. Such greenhouse gas offsets must exhibit environmental integrity principles, including additionality, in accordance with rules promulgated by the department in consultation with the office of long-term planning and sustainability. For the purposes of this section, additionality means a requirement that an offset project is not already required by local, national or international regulations. Prior to the department promulgation of rules pursuant to this section, the department shall consult the advisory board on environmental justice as established by section 3-1006 of the administrative code.


**Editor's note:** For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.3.6.3 Deductions from reported annual building emissions for clean distributed energy resources.

A deduction from the reported annual building emissions shall be authorized based upon the calculated output of a clean distributed energy resource located at the building subject to the report. The department shall promulgate rules to set forth how such deduction shall be calculated, in accordance with the following:

1. For a clean distributed energy resource that generates electricity, the department shall establish separate calculations for each type of commercially available clean distributed energy resource, which shall not be revised more frequently than once every three years.

2. For a clean distributed energy resource that stores electricity, the deduction shall be based on the size of the resource and its ability to reduce greenhouse gas emissions during designated peak periods.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2019/147, 7/27/2019, eff. 11/15/2019)

§ 28-320.3.7 Reports required to be filed by owner.

By May 1, 2025, and by May first of every year thereafter, the owner of a covered building shall file with the department a report, certified by a registered design professional, prepared in a form and manner and containing such information as specified in rules of the department, that for the previous calendar year such building is either:

1. In compliance with the applicable building emissions limit established pursuant to section 28-320.3; or

2. Not in compliance with such applicable building emissions limit, along with the amount by which such building exceeds such limit.

For a report filed on or after May 1, 2026, where a report required to be submitted by May 1 in the prior year indicated that the covered building was not in compliance with the applicable building emissions limit established pursuant to section 28-320.3 in the calendar year covered by such report, but such building is in compliance for the calendar year covered by the report required to be submitted by May 1 in the current year, such report shall describe the methods used to achieve compliance.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2020/117, 11/17/2020, eff. 11/17/2020; Am. L.L. 2021/126, 11/7/2021, eff. 11/7/2022)

**Editor's note:** For related unconsolidated provisions, see Appendix A at L.L. 2021/126.
§ 28-320.3.7.1 Extension of time to file report.

An owner may apply for an extension of time to file an annual report required by section 28-320.3.7 in accordance with this section and the rules of the department. An extension may be granted where the owner is unable to file the certified report by the scheduled due date despite such owner's good faith efforts, as documented in such application. An extension granted pursuant to this section shall not modify the owner's obligation to comply with the applicable emission limits for such calendar year.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.3.7.2 Reporting on compliance by the department.

By January 1, 2026, and January 1 of every year thereafter, the office of building energy and emissions performance shall submit to the mayor and the speaker of the council a report relating to compliance with this section. Such report shall include, but not be limited to:

1. Beginning with the report due January 1, 2027, the methods used by covered buildings to comply with the building emissions limits established pursuant to section 28-320.3 where such buildings were not in compliance for the report submitted in the previous year, including, as applicable, any retrofitting improvements and purchasing of clean energy, disaggregated by method and by number of buildings; and

2. The total number of buildings in each occupancy group, and the number of buildings in compliance with emissions limits, disaggregated by occupancy group.

(L.L. 2020/117, 11/17/2020, eff. 11/17/2020)

§ 28-320.3.8 Continuing requirements.

In 2055, the office of building energy and emissions performance shall prepare and submit to the mayor and the speaker of the council recommendations whether to repeal or amend any of the requirements of this article.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.3.9 Extension for certain income-restricted housing.

This section is applicable to covered buildings:

1. That are owned by a limited-profit housing company organized under article 2 of the New York state private housing finance law, and

2. That contain one or more dwelling units for which occupancy or initial occupancy is restricted based upon the income of the occupant or prospective occupant thereof as a condition of a loan, grant, tax exemption, tax abatement, or conveyance of property from any state or local governmental agency or instrumentality pursuant to the private housing finance law, the general municipal law, or section 420-c of the New York state real property tax law.

Such covered buildings are exempted from the annual building emissions limits set forth in section 28-320.3.1 and 28-320.3.2 of this code and from any applicable reporting requirements. Commencing January 1, 2035, such covered buildings shall be subject to the annual building emissions limits established pursuant to sections 28-320.3.4 and 28-320.3.5 of this code and any applicable reporting requirements.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2019/147, 7/27/2019, eff. 11/15/2019; Am. L.L. 2021/126, 11/7/2021, eff. 11/7/2022)

Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2021/126.

§ 28-320.3.10 Changes in building status.

The department may establish by rule procedures for a building to apply for additional time to comply with the emissions limits when such building converts to a new occupancy group or use with lower emissions limits, or undergoes a change affecting the applicability of this article to such building.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.3.10.1 Additional time for certain covered buildings.

A covered building where at least one dwelling unit is required by law or by an agreement with a governmental entity to be regulated in accordance with the emergency tenant protection act of 1974, the rent stabilization law of 1969, or the local emergency housing rent control act of 1962, but that is not a rent regulated accommodation pursuant to this article, may delay compliance with annual building emissions limits until January 1, 2026, and submission of the first report required by section 28-320.3.7 until May 1, 2027.
§ 28-320.4 Assistance.

The office of building energy and emissions performance shall establish and maintain a program for assisting owners of covered buildings in complying with this article, as well as expand existing programs established to assist owners in making energy efficiency and renewable energy improvements. These programs shall be made available to assist building owners without adequate financial resources or technical expertise.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.5 Outreach and education.

The office of building energy and emissions performance shall establish and engage in outreach and education efforts to inform building owners about building emissions limits, building emissions intensity limits and compliance with this article. The materials developed for such outreach and education shall be made available on the office's website. Such outreach shall include a list of city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which buildings reasonably could be eligible. The office of building energy and emissions performance shall also provide outreach, education, and training opportunities for buildings’ maintenance and operations staff.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.5.1 Reporting on outreach and education.

By June 1, 2021, and by June 1 in every year thereafter, the office of building energy and emissions performance shall submit a report to the mayor and the speaker of the council, detailing the outreach and education efforts made pursuant to section 28-320.5, including, but not limited to information provided about incentive programs and other sources of funding. Such report shall also include the number of staff members working at the office of building energy and emissions performance.

(L.L. 2020/117, 11/17/2020, eff. 11/17/2020)

§ 28-320.6 Penalties.

An owner of a covered building who has submitted a report pursuant to section 28-320.3.7 that indicates that such building has exceeded its annual building emissions limit shall be liable for a civil penalty of not more than an amount equal to the difference between the building emissions limit for such year and the reported building emissions for such year, multiplied by $268.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2021/126, 11/7/2021, eff. 11/7/2022)

Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2021/126.

§ 28-320.6.1 Determination of penalty.

In considering the amount of the civil penalty to be imposed pursuant to this article, a court or administrative tribunal shall give due regard to aggravating or mitigating factors including:

1. The respondent’s good faith efforts to comply with the requirements of this article, including investments in energy efficiency and greenhouse gas emissions reductions before the effective date of this article;

2. The respondent's history of compliance with this article;

3. The respondent's compliance with the conditions of any adjustment to the applicable building emissions limit, issued by the department pursuant to section 28-320.7;

4. Whether the noncompliance was directly related to unexpected and unforeseeable events or conditions during the calendar year outside the control of the respondent;

5. The respondent's access to financial resources, where the court or administrative tribunal may consider the financial hardship of a building owned by such respondent as evidence of such respondent's access to such financial resources; and

6. Whether payment of such penalty would impact the operations of facilities critical to human life or safety.


Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2023/077.
§ 28-320.6.1.1 Limitation on the use of renewable energy credits.

The department shall by rule limit the amount of a deduction authorized pursuant to section 28-320.6.1. In determining such limit, the department shall consider items 1 through 3 of this section.

1. The availability or expected availability of renewable energy credits;

2. Environmental justice impacts; and

3. Any other relevant factor determined to be related to the use of or restrictions on the use of such credits.

(L.L. 2023/077, 6/11/2023, eff. 6/11/2023)

Editor's note: For related un consolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.6.2 Civil penalty for failure to file report.

It shall be unlawful for the owner of a covered building to fail to submit an annual report as required by section 28-320.3.7 on or before the applicable due date. An owner of a covered building subject to a violation for failure to file a report shall be liable for a penalty of not more than an amount equal to the gross floor area of such covered building, multiplied by $0.50, for each month that the violation is not corrected within the 12 months following the reporting deadline; provided, however, that an owner shall not be liable for a penalty for a report demonstrating compliance with the requirements of this article if such report is filed within 60 days of the date such report is due.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.6.3 False statement.

It shall be unlawful to knowingly make a material false statement in a report or other submission filed with the department, pursuant to this article. A violation of this section shall be a misdemeanor and subject to a fine of not more than $500,000 or imprisonment of not more than 30 days or both such fine and imprisonment. A person who violates this section shall also be liable for a civil penalty of not more than $500,000.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.6.4 Penalty recovery.

Civil penalties provided for by this article may be recovered in a proceeding before an administrative tribunal within the jurisdiction of the office of administrative trials and hearings. Administrative summonses returnable to such tribunal for violations of this article may be issued by the department or by an agency designated by the department. Civil penalties provided for by this article may also be recovered in an action by the corporation counsel in any court of competent jurisdiction.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.7 Adjustment to applicable annual building emissions limit.

The department, in consultation with the mayor's office of long term planning and sustainability or any other agency designated by the mayor, may grant an adjustment of the annual building emissions limit applicable to a covered building in existence on the effective date of this article or for which a permit for the construction of such building was issued prior to such effective date, provided that the owner is complying with the requirements of this article to the maximum extent practicable.

1. Such an adjustment may be granted upon a specific determination that all of the following conditions in items 1.1 through 1.3 are met:

   1.1. Capital improvements are necessary for strict compliance with the limit set forth in section 28-320.3 and it is not reasonably possible to make such improvements due to (i) a constraint imposed by another provision of law including but not limited to designation as a landmark, landmark site, interior landmark, or within a historic district pursuant to chapter 3 of title 25 of the administrative code, or (ii) a physical condition of the building or building site including but not limited to lack of access to energy infrastructure, space constraints, or lack of access to a space within a building covered by a lease in existence on the effective date of this section;

   1.2. The owner has made a good faith effort to purchase greenhouse gas offsets to comply with section 28-320.3 but a sufficient quantity is not available at a reasonable cost; and

   1.3. The owner has availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate.
2. Such an adjustment may be granted upon a specific determination that all of the following conditions in items 2.1 through 2.4 are met:

2.1. The cost of financing capital improvements necessary for strict compliance with the limit set forth in section 28-320.3 would prevent the owner of a building from earning a reasonable financial return on the use of such building or the building is subject to financial hardship as defined in this article. In evaluating the ability of an owner to earn a reasonable financial return, the department may consider future savings expected from such capital improvements;

2.2. The owner is not eligible for any program funded by the city or enabled by a local law that provides financing for the purpose of energy reduction or sustainability measures. Proof of ineligibility for financing must be demonstrated by rejection from any such program funded by the city or enabled by a local law or an affidavit explanation why such owner could not reasonably participate in such programs;

2.3. The owner has made a good faith effort to purchase greenhouse gas offsets or renewable energy credits to comply with section 28-320.3 but a sufficient quantity is not available at a reasonable cost; and

2.4. The owner has availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2019/147, 7/27/2019, eff. 11/15/2019)

§ 28-320.7.1 Effective period.

An adjustment granted pursuant to item 1 of section 28-320.7 may be effective for a period of not more than three calendar years. An adjustment granted pursuant to item 2 of such section may be effective for a period of not more than one calendar year.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.7.2 Application.

An application for such an adjustment shall be made in the form and manner determined by the department and certified by a registered design professional.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.8 Adjustment to applicable annual building emissions limit for calendar years 2024 through 2029.

The department may grant an adjustment of the annual building emissions limit for calendar years 2024 through 2029 applicable to a covered building in existence on the effective date of this article where such covered building emissions in calendar year 2018 exceeds the building emissions limit as prescribed by section 28-320.3.1 by more than 40 percent, as reported to the department by a registered design professional. The adjustment shall result in a required building emissions limit that is 70 percent of the calendar year 2018 building emissions for the covered building. Such adjustment may be granted where all of the following conditions in items 1 through 3 are met:

1. The owner of the covered building demonstrates that the building emissions in excess of the building emissions limit is attributable to special circumstances related to the use of the building, including but not limited to 24 hour operations, operations critical to human health and safety, high density occupancy, energy intensive communications technologies or operations, and energy-intensive industrial processes;

2. The owner of the covered building demonstrates that the energy performance of the covered building is equivalent to a building in compliance with the New York city energy conservation code in effect on January 1, 2015; and

3. The owner of the covered building has submitted a plan to the department setting forth a schedule of alterations to the covered building or changes to the operations and management of the covered building sufficient to ensure that the covered building will be in compliance with the annual building emissions limits for calendar years 2030 through 2034, as required by section 28-320.3.2.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2019/147, 7/27/2019, eff. 11/15/2019)

§ 28-320.8.1 Effective period.

An adjustment granted pursuant to section 28-320.8 may be effective for the reporting years 2025 through 2030, as prescribed by section 28-320.3.7, provided that the certificate of occupancy has not been amended after December 31, 2018.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)
§ 28-320.8.1.1 Extension of effective period.

The commissioner may also grant an extension of the effective period of the adjustment to applicable annual building emissions limit for calendar years 2030 - 2035, as prescribed by section 28-320.3.8. Such extension may be granted upon submission of a schedule of alterations to the covered building or changes to the operations and management of the covered building in accordance with section 28-320.8 sufficient to ensure that by 2035 the covered building will comply with a required building emissions limit that is 50 percent of the reported 2018 building emissions for the covered building.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.8.2 Application.

An application for an adjustment shall be submitted to the department before January 1, 2025 in the form and manner determined by the department and certified by a registered design professional.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2023/077, 6/11/2023, eff. 6/11/2023)

Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.9 Adjustment to applicable annual building emissions limit for not-for-profit hospitals and healthcare facilities.

The department shall grant an adjustment of the annual building emissions limits for calendar years 2024 - 2029 and 2030 - 2034 where all of the following conditions in items 1 and 2 are met:

1. The building is classified as a not-for-profit hospital, not-for-profit health center, or not-for-profit HIP center, in existence on the effective date of this article; and

2. By no later than January 1, 2025, the owner of the covered building submits an application to the department for such adjustment in a form and manner prescribed by the department.

For calendar years 2024 through 2029, the adjustment shall result in the covered building being subject to an emissions limit that is 85 percent of the calendar 2018 building emissions for such covered building. For calendar years 2030 through 2034, the adjustment shall result in the covered building being subject to an emissions limit that is 70 percent of the calendar 2018 building emissions for such covered building.


Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-320.10 Fee schedule.

The department may establish by rule a schedule of fees that shall be paid upon the filing of a report or an application for an adjustment to the applicable building emissions limit pursuant to this article. Such schedule may include a fee for the late filing of a report.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-320.11 Carbon trading study.

The office of long-term planning and sustainability shall conduct a study on the feasibility of a citywide trading scheme for greenhouse gas emissions from buildings and submit a report and implementation plan with the findings of such study to the mayor and the speaker of the council no later than January 1, 2021. Such study shall include methods to ensure equitable investment in environmental justice communities that preserve a minimum level of benefits for all covered buildings and do not result in any localized increases in pollution. Such study shall also include an approach to a marketplace for credit trading, pricing mechanisms, credit verification, and mechanisms for regular improvement of the scheme. Such study should also consider the reports and recommendations of the advisory board.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2023/077, 6/11/2023, eff. 6/11/2023)

Editor’s note: For related unconsolidated provisions, see Appendix A at L.L. 2023/077.
Article 321: Energy Conservation Measure Requirements for Certain Buildings

§ 28-321.1 Definitions.

As used in this article, the following terms shall have the following meanings:

COVERED BUILDING. The term "covered building" means a building that is (i) a rent regulated accommodation, (ii) a building whose main use or dominant occupancy is classified as occupancy group A-3 religious house of worship, (iii) owned by a housing development fund company organized pursuant to the business corporation law and article 11 of the New York state private housing finance law, or (iv) a building that participates in a project-based federal housing program and, as it appears in the records of the department of finance, such building (i) exceeds 25,000 (2322.5 m²) gross square feet, or (ii) is one of two or more buildings on the same tax lot that together exceed 50,000 gross square feet (4645 m²), or (iii) is one of two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet (4645 m²).

Exceptions:

1. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than 25,000 gross square feet (2322.5 m²), as certified by a registered design professional to the department.

2. An industrial facility primarily used for the generation of electric power or steam.

RENT REGULATED ACCOMMODATION. The term "rent regulated accommodation" means a building in which more than 35% of dwelling units are required by law or by an agreement with a governmental entity to be regulated in accordance with the emergency tenant protection act of 1974, the rent stabilization law of 1989, or the local emergency housing rent control act of 1962.


Editor's note: For related unconsolidated provisions, see Appendix A at L.L. 2021/126.

§ 28-321.2 Required energy conservation measures for certain buildings.

A covered building must comply with either section 28-321.2.1 or section 28-321.2.2.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-321.2.1 Energy compliant buildings.

The owner of a covered building shall demonstrate that, for calendar year 2024, the annual building emissions of such covered building did not exceed what the applicable annual building emissions limit would be pursuant to section 28-320.3.2 if such building were a covered building as defined in article 320 of this chapter.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-321.2.2 Prescriptive energy conservation measures.

By December 31, 2024, the owner of a covered building shall ensure that the following energy conservation measures have been implemented where applicable:

1. Adjusting temperature set points for heat and hot water to reflect appropriate space occupancy and facility requirements;

2. Repairing all heating system leaks;

3. Maintaining the heating system, including but not limited to ensuring that system component parts are clean and in good operating condition;

4. Installing individual temperature controls or insulated radiator enclosures with temperature controls on all radiators;

5. Insulating all pipes for heating and/or hot water;

6. Insulating the steam system condensate tank or water tank;

7. Installing indoor and outdoor heating system sensors and boiler controls to allow for proper set-points;
8. Replacing or repairing all steam traps such that all are in working order;

9. Installing or upgrading steam system master venting at the ends of mains, large horizontal pipes, and tops of risers, vertical pipes branching off a main;

10. Upgrading lighting to comply with the standards for new systems set forth in section C405 of the New York city energy conservation code and/or applicable standards referenced in such energy code on or prior to December 31, 2024. This provision is subject to exception 1 in section 28-310.3;

11. Weatherizing and air sealing where appropriate, including windows and ductwork, with focus on whole-building insulation;

12. Installing timers on exhaust fans; and

13. Installing radiant barriers behind all radiators.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019; Am. L.L. 2023/077, 6/11/2023, eff. 6/11/2023)

**Editor's note:** For related unconsolidated provisions, see Appendix A at L.L. 2023/077.

§ 28-321.3 Reports.

By May 1, 2025, an owner of a covered building shall submit a report to the department to demonstrate compliance with this section in accordance with section 28-321.3.1 or section 28-321.3.2.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-321.3.1 Energy compliant buildings reports.

The owner of a covered building shall file with the department a report, certified by a registered design professional, prepared in a form and manner and containing such information as specified in rules of the department, that for calendar year 2024 such building was in compliance with the applicable building emissions limit established pursuant to section 28-320.3.2.

(L.L. 2019/097, 5/19/2019, eff. 11/15/2019)

§ 28-321.3.2 Prescriptive energy conservation measures reports.

A retro-commissioning agent, as defined in article 308, shall prepare and certify a report in a form and manner determined by the department. The report shall include such information relating to the completion of the prescriptive energy conservation measures as shall be set forth in the rules of the department including, at a minimum:

1. Project and team information:
   1.1. Building address.
   1.2. Experience and certification of persons performing the prescriptive energy conservation measures and any staff involved in the project.
   1.3. Name, affiliation, and contact information for persons performing the prescriptive energy conservation measures, owner of building, and facility manager of building.

2. Building information:
   2.1. List of all HVAC, domestic hot water, electrical equipment, lighting, and conveyance equipment types serving the covered building.
RESOLUTION

On motion of Trustee Lambert, seconded by Trustee Fleisig the following Resolution was duly adopted on roll call vote:

50:20 RESOLUTION FOR LOW- EMBODIED CARBON CONCRETE FOR BUILDING AND INFRASTRUCTURE PROJECTS IN THE VILLAGE OF HASTINGS-ON-HUDSON

WHEREAS, there is scientific consensus regarding the reality of climate change and recognition that the emission of greenhouse gasses from human activity and the construction of the built environment are significant drivers of climate change; and

WHEREAS, the Intergovernmental Panel on Climate Change, an intergovernmental body of the United Nations that is dedicated to providing the world with an objective, scientific view of climate change, reported in 2013 that the last 30 years were the warmest since 1850 and likely the warmest in the past 1,400 years, and that the current decade is set to be the hottest on record; that carbon dioxide, methane, and nitrous oxide levels are at their highest levels in 800,000 years; and that global mean sea level rose 0.62 feet from 1901 to 2010 and continues to rise; and

WHEREAS, the Village of Hastings-on-Hudson is committed, through its Sustainability Action Plan, commitment to the Paris Climate Agreement and the Global Covenant of Mayors for Climate & Energy, and adoption of the New York State Climate Smart Communities pledge, to implement policies and undertake all possible measures to reduce its contribution to human caused climate change, including reducing greenhouse gas emissions; and

WHEREAS, embodied carbon refers to the carbon emissions generated as a result of the manufacturing and transportation of materials and the construction of building and infrastructure projects; and

WHEREAS, concrete is the most widely used construction material in the world because of its low cost, strength, and durability, among other factors, and is a significant component of all building and infrastructure projects, including those of municipalities; and

WHEREAS, cement, the critical ingredient that gives the concrete its strength, is responsible for up to seven percent of the world's carbon dioxide emissions, mainly through a chemical process called calcination, as well as through the use of energy in production derived from the combustion of fossil fuels; and
WHEREAS,  
low-embodied carbon concrete is defined as concrete that has been verified, as measured by a Global Warming Potential (GWP) metric, to embody lower carbon emissions as compared to the baseline embodied carbon emissions of conventional concrete; and

WHEREAS,  
lowering the embodied carbon emissions from concrete can be achieved through diverse methods and processes, including but not limited to: (A) using less cement in concrete mixes; (B) replacing or substituting cement with supplemental cementitious materials (SCMs) such as fly ash, blast furnace slag, or ground glass pozzolan; (C) using locally produced cement and other concrete components resulting in reduced emissions from transport; (D) the utilization and mineralization of carbon in concrete materials; and

WHEREAS,  
the quality of concrete may be improved through these techniques, the cost compared to traditional methods is offset by lower materials cost, and the use of low-embodied concrete is established in the construction sector and has been successfully utilized for the construction of building and infrastructure projects by several municipalities; and

WHEREAS,  
the annual benefits of the use of this concrete in New York State, if universally adopted would be the equivalent to the carbon sequestration for tens of thousands of acres of preserved forest; and

WHEREAS,  
the Village of Hastings-on-Hudson has the opportunity to be a leader in New York State in promoting the use of this technology; therefore, be it

RESOLVED:  
that the Village of Hastings-on-Hudson encourages, and will work to promote, the use of low embodied carbon concrete products in building and infrastructure projects involving concrete, where the utilization of low embodied carbon concrete does not significantly increase the costs of or delay project completion, and where utilization does not compromise either construction integrity or public safety. Such promotion could include, but may not be limited to, identifying local low embodied carbon concrete product options, making embodied carbon concrete educational materials more accessible, recognizing local projects utilizing low embodied carbon concrete products, and sharing Hastings-on-Hudson's program successes and lessons learned with other towns and local governments in the state and region.

ROLL CALL VOTE

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<th>Trustee Mary Lambert</th>
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<td>Mayor Nicola Armacost</td>
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CERTIFICATION

I, Joseph L. Cerretani, Village Clerk of Hastings-on-Hudson, do hereby certify that I have compared the foregoing copy of the Resolution adopted at a Regular Meeting of the Board of Trustees on May 19, 2020 with the original now remaining on file at this office and that the same is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Village of Hastings-on-Hudson this 20th day of May 2020.

[Signature]
Joseph L. Cerretani
Village Clerk
RESOLUTION

On motion of Trustee Lopez, seconded by Trustee Lambert the following Resolution was duly adopted as amended:

53:22 REVISED VILLAGE OF HASTINGS-ON-HUDSON CLIMATE EMERGENCY DECLARATION

WHEREAS, on 12th December 2015, at the United Nations Framework Convention on Climate Change's (UNFCCC) 21st Conference of the Parties (COP 21), 196 countries, including the United States, adopted the “Paris Agreement”, recognizing the threat of climate change and agreeing to pursue efforts to limit the global temperature increase to 1.5 degrees Celsius; and

WHEREAS, on June 1st 2017, the United States Government announced its intent to withdraw from the Paris Agreement, thereby abandoning global leadership on addressing climate change; and

WHEREAS, on June 6th 2017, the Village of Hastings-on-Hudson joined with over 240 Climate Mayors and their municipalities representing 56 million Americans in adopting, honoring and upholding the goals enshrined in the Paris Agreement by declaring “We Are Still In” and pledging to do our share to meet the Paris emission reduction targets; and

WHEREAS, limiting the global temperature increase to 1.5 degrees Celsius will require unprecedented transitions in all aspects of society over the next decade; and

WHEREAS, global annual averaged surface air temperature has increased by about 1.8°F (1.0°Celsius) over the last 115 years (1901 to 2016) as cited in the U.S. Global Change Research Program's 2017 Climate Science Special Report; and

WHEREAS, the past five years are collectively the warmest in modern history, with increasing and intensifying extreme weather events and rising sea levels, and the total cost of extreme weather events for the United States from 2010 to 2019 has been calculated to be $802 billion dollars by the National Oceanic Atmospheric Administration (NOAA); and

WHEREAS, extreme weather events, including extremes of temperature as well as increasingly devastating storms, flooding and wildfires are causing severe harm to America's agriculture, forestry, and tourism industries and Hastings-on-Hudson like other municipalities in Westchester County, was recently ravaged by Hurricane Ida, causing devastating flash flooding and property damage; and
WHEREAS, the construction of new fossil fuel infrastructure and expanded reliance on fossil fuels exposes communities to public health and safety risks at the local and global levels; and

WHEREAS, climate change has and continues to cause adverse impacts on human health, as well as the introduction of new vectors for infectious disease, and species extinctions and related threats to biodiversity, with accompanying grave impacts on food and water security, economic security, and social-emotional wellbeing; and

WHEREAS, the COVID-19 global pandemic has highlighted and exacerbated existing health inequalities that have resulted from climate change, such as neighborhoods with poorer air quality being disproportionately affected by the disease; and

WHEREAS, marginalized populations worldwide, including people of color, immigrants, Indigenous communities, low-income individuals, people with disabilities, outdoor laborers, and the unhoused, especially women and children, are already disproportionately affected by the effects of climate change, and will continue to bear an excess burden as temperatures increase, and disasters worsen; and

WHEREAS, the massive scope and scale of action necessary to stabilize the climate and biosphere will require unprecedented levels of public awareness, engagement, and deliberation to develop and implement effective, just, and equitable policies to address the climate emergency; and

WHEREAS, on July 18th, 2019, the Governor of New York signed into law the Climate Leadership and Community Protection Act (Climate Act), which is among the most ambitious climate laws in the world and requires our State to: reduce statewide greenhouse gas emissions 40 percent by 2030 and no less than 85 percent by 2050 from 1990 levels; achieve 100% zero-emission electricity by 2040 and statewide carbon neutrality by 2050; and

WHEREAS, the Village of Hastings-on-Hudson embraces the mandates of the Climate Act, has been at the forefront of sustainability and environmental policy and aims to continue serving as a leader in climate action by building a climate-resilient and adaptive community for all residents and by meeting its Paris Agreement commitments; and

WHEREAS, the Village of Hastings-on-Hudson is a Silver Certified Climate Smart Community as designated by New York State and is currently the highest-ranking Clean Energy Community in the State; and
WHEREAS, the Village achieved this status through a range of actions including upgrading light fixtures with energy efficient LED technology; adopting an Anti-idling Local Law and Resolution (2019); installing an electric vehicle (EV) charging station (2019); purchasing EVs for the municipal fleet; adopting a Green Fleet Policy (2021) and a Biking and Walking Master Plan (2021).

WHEREAS, since 2015, the Village of Hastings-on-Hudson has participated in Community Choice Aggregation (CCA), which ensures that 100% of residential energy comes from renewable sources, as well as Community Solar, and was an early adopter of the New York Stretch Energy Code (2020), Property Assessed Clean Energy (C-PACE) Financing (2020), and Uniform Solar Permitting (2017), thereby facilitating the move to clean energy for local residents and businesses; and

WHEREAS, the Village has adopted an Energy Benchmarking Policy (2016), commissioned a Government Building Energy Audit (2019), adopted a Heat Emergency Plan (2020), a Natural Resources Inventory (2020) and a Climate Vulnerability Assessment (2020), each of which identified existing vulnerabilities and key actions the municipality can take to address climate change; and

WHEREAS, the Village has made efforts to reduce waste by promoting recycling, food waste reduction and composting as well as other strategies laid out in its Organics Management Plan (2021); and

WHEREAS, in 2021, the Village dedicated 112 acres of open space as parkland, which brings the total dedicated parkland to 156 acres, representing about 84% of the open space owned by the Village, and has engaged in multiple Village-wide tree planting campaigns, thereby contributing to carbon sequestration; and

WHEREAS, the Village of Hastings-on-Hudson has drafted a Government and Community Green House Gas (GHG) Inventory which sets emission targets, and is in the process of drafting a Climate Action Plan and updating its Comprehensive Plan with specific action steps to address the climate crisis; and

WHEREAS, the Board of Trustees of the Village of Hastings-on-Hudson intends to implement policies limiting fossil fuel expansion and promoting electrification as part of the SAFE Cities movement because of the inherent dangers to the public’s health and safety in extraction, transport, storage, and combustion of fossil fuels; and
WHEREAS, as part of the Race to Zero advocated by Climate Mayors and ICLEI-Local Governments for Sustainability, the Mayor of Hastings-on-Hudson committed to a “fair share” science-based target of 62.8% per capita reduction in GHG emissions by 2030 (substantially more than the US commitment); and

WHEREAS, the Westchester County Board of Legislators has adopted a Climate Emergency Declaration and has urged local governments to do the same; and

WHEREAS, world leaders met the week of October 31, 2021, at the UNFCCC’s 26th Conference of the Parties (COP 26) in Glasgow, Scotland to renew and report on their Paris Agreement commitments;

NOW THEREFORE, BE IT RESOLVED, that the Mayor and Board of Trustees of Village of Hastings-on-Hudson declares a climate emergency and urges sister municipalities to do the same; and

BE IT FURTHER RESOLVED, that the Board of Trustees of the Village of Hastings-on-Hudson will develop recommendations that limit fossil fuel infrastructure expansion and promote electrification and a clean energy future in order to protect public health and safety.

Note: The original version of the Climate Emergency Declaration was forwarded to State and local officials.

ROLL CALL VOTE

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CERTIFICATION

I, Anthony P. Costantini, Village Clerk of Hastings-on-Hudson, do hereby certify that I have compared the foregoing copy of the Resolution adopted at the Regular Meeting of the Board of Trustees on April 19, 2022, with the original now remaining on file at this office and that the same is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Village of Hastings-on-Hudson this 20th day of April, 2022.

Anthony P. Costantini
Village Clerk
RESOLUTION

On motion of Trustee Lambert, seconded by Trustee Fleisig the following Resolution was duly adopted:

86:22 ADOPTION OF PROPOSED LOCAL LAW D OF 2022 TO AMEND CHAPTER 110 COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM OF THE CODE OF THE VILLAGE OF HASTINGS-ON-HUDSON

RESOLVED: that the Mayor and Board of Trustees hereby adopt Proposed Local Law D of 2022 Amending Chapter 110 Community Choice Aggregation (Energy) Program of the Code of the Village of Hastings-on-Hudson as follows:

A LOCAL LAW TO AMEND CHAPTER 110 COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM OF THE CODE OF THE VILLAGE OF HASTINGS-ON-HUDSON

Be it enacted by the Board of Trustees of Village of Hastings-on-Hudson as follows:

(deleted language in strikeout, added language in bold)

SECTION 1: Chapter 110 of the Code of the Village of Hastings-on-Hudson is hereby amended To read as follows:

§ 110-1. Legislative findings; intent and purpose; authority.

A. It is the policy of both the Village of Hastings-on-Hudson and the State of New York to reduce costs and provide cost certainty for the purpose of economic development, to promote deeper penetration of energy efficiency and renewable energy resources, such as wind and solar, and wider deployment of distributed energy resources as well as to examine the retail energy markets and increase participation of and benefits for residential and small commercial Eligible Customers in those markets. Among the policies and models that may offer benefits in New York is community choice aggregation (CCA), which allows local governments to determine the default supplier of electricity procure electric and natural gas supply on behalf of its residential and small commercial customers Eligible Customers.
B. The purpose of this CCA Program is to allow participating local governments, including the Village of Hastings-on-Hudson, to procure Energy Services, such as energy supply service and Community Distributed Generation (CDG) Credits, for their residential and small commercial customers Eligible Customers, who will have the opportunity to opt out of the procurement, while maintaining transmission and distribution service from the existing distribution Utility. This chapter establishes a program that will allow the Village to put out Energy Services for bid the total amount of natural gas and/or electricity being purchased by local residential and small commercial customers. Bundled customers Eligible Customers will have the opportunity to have more control to lower their overall energy costs, to spur clean energy innovation and investment, to improve customer choice and value, and to protect the environment, thereby, fulfilling the purposes of this chapter and fulfilling an important public purpose.

C. The Village of Hastings-on-Hudson is authorized to implement this Community Choice Aggregation (Energy) Program pursuant to §Section 10-1, Subdivision (1)(ii)(a)(12), of the New York Municipal Home Rule Law and State of New York Public Service Commission Case No. 14-M-0564, Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester, Order Granting Petition in Part (issued February 26, 2015), as may be amended, including subsequent orders of the Public Service Commission issued in connection with or related to Case No. 14-M-0564 (collectively, the "Order"). "Order" shall also mean orders of the Public Service Commission related to State of New York Public Service Commission Case No. 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs (issued April 20, 2016, hereinafter the CCA Framework Order) December 15, 2104) to the extent that orders related to Case No. 14-M-0224 enable actions by the Village of Hastings-on-Hudson not otherwise permitted pursuant to orders related to Case No. 14-M-0564; provided, however, that in the event of any conflict between orders from Case No. 14-M-0564 and orders from Case No 14-M-0224, orders from Case No 14-M-0564 shall govern the CCA Program.

D. This chapter shall be known and may be cited as the "Community Choice Aggregation (Energy) Program Law of the Village of Hastings-on-Hudson."


For purposes of this chapter, and unless otherwise expressly stated or unless the context otherwise requires, the terms in this chapter shall have the meanings set forth below, or if not so defined, as employed in the State of New York Public Service Commission's Uniform Business Practices or, if not so defined there, as indicated below:

**BUNDLED CUSTOMERS**

Residential and small commercial customers of electricity or natural gas ("fuels") who are purchasing the fuels from the distribution utility.
**COMMUNITY CHOICE AGGREGATION PROGRAM OR CCA PROGRAM**
A municipal energy procurement program, which replaces the incumbent utility as the default supplier electric and/or gas Supplier for all bundled customers Opt-out Eligible Customers within the Village of Hastings-on-Hudson. The CCA Program may include Community Distributed Generation Credits on an opt-out basis and other DER offerings on an opt-in basis.

**COMMUNITY DISTRIBUTED GENERATION (OR “CDG”)**
Community shared renewables program expanding customer access to the environmental and system benefits of qualifying renewable project generation located behind a non-residential host meter based on remotely sharing net metering or VDER monetary credits through a monetary credit applied to the utility bills of Participating Customers.

**COMMUNITY DISTRIBUTED GENERATION CREDITS (OR “CDG CREDITS”)**
The monetary credit applied to the utility bills of Participating Customers through the CDG program.

**CUSTOMERS**
Eligible Customers: Customers of electricity and/or natural gas eligible to participate in CCA, either on an Opt-out or Opt-in basis, as delineated in the CCA Framework Order.

Opt-out Eligible Customers: Eligible Customers that are eligible for opt-out treatment as delineated in the CCA Framework Order.

Participating Customers: Opt-out eligible customers who have been enrolled subsequent to the opt-out process and other customers who have opted in.

**CUSTOMER-SPECIFIC DATA**
Utility data for all Opt-out Eligible Customers including account holder name, service address, primary language, if available, any customer-specific alternate billing name and/or address, and other relevant, authorized data.

**DISTRIBUTED ENERGY RESOURCES (OR “DER”)**
Reforming the Energy Vision (REV) initiatives that further engage and/or reduce cost of service for participating consumers, optimize system benefits, and/or address infrastructure and demand challenges within the geography of the CCA including, but not limited to, local renewable energy projects, Community Distributed Generation, peak demand management, energy efficiency, demand response, energy storage, community resilience microgrid projects, and other innovative initiatives.

**DISTRIBUTION UTILITY**
Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission.
ENERGY SERVICES
The provision of energy supply as electric power and/or natural gas or the provision of DER offerings.

PUBLIC SERVICE COMMISSION
New York State Public Service Commission.

SMALL COMMERCIAL
Nonresidential customers as permitted by the Order.

SUPPLIERS
Energy service companies (ESCOs) that procure electric power and natural gas and/or DER providers and/or other entities with authority to provide Energy Services for bundled customers Participating Customers in connection with this chapter, or alternatively, generators of electricity and natural gas or other entities who procure and resell electricity or natural gas.

SUSTAINABLE WESTCHESTER
A not-for-profit organization comprised of member municipalities in Westchester County, New York.

VALUE OF DISTRIBUTED ENERGY RESOURCES (OR “VDER”)
REV proceeding (Case 15-E-0751) that replaces the net metering program with a weighted value stack tariff mechanism for accurately pricing Distributed Energy Resources on the grid as a reflection of their system value. Value stack components include the price of energy, capacity, avoided carbon emissions, cost savings to customers and utilities, demand reduction and locational relief. The goal of this proceeding is to increase DER penetration and benefits of DER installations.


A. A Community Choice Aggregation (Energy) Program is hereby established by the Village of Hastings-on-Hudson, whereby the Village shall work together with Sustainable Westchester to implement the CCA Program to the full extent permitted by the CCA Framework Order, as set forth more fully herein. The Village's role under the CCA Program involves the aggregating of the electric and/or natural gas supply demand for energy of its residents Eligible Customers and the entering into a contract with one or more suppliers for supply and service contracts for Energy Services. Under the CCA Program, the operation and ownership of the utility service shall remain with the distribution utility Distribution Utility.

B. The Village's participation in a CCA Program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The Village will not take over any part of the electric or gas transmission or distribution system and will not furnish any type of utility service but will instead negotiate with Suppliers on behalf of participating residential and small commercial customers Participating Customers.
C. In order to implement the CCA Program, the Village will adopt one or more resolutions that outline the process of and conditions for participation in the CCA Program, including but not limited to signing a contract for a compliant bid with one or more Suppliers, all as consistent with the local law and the CCA Framework Order.

D. The Public Service Commission supervises retail markets and participants in these markets through legislative and regulatory authority and the Uniform Business Practices, which includes rules relating to the eligibility of participating ESCOs Suppliers, the operation by which ESCOs Suppliers provide energy Services, and the terms on which customers may be enrolled with ESCOs Suppliers.


A. As permitted by the CCA Framework Order, the Village of Hastings-on-Hudson may request from the Distribution Utilities aggregated customer information by fuel type and service classification on a rolling basis and other relevant authorized data.

B. Sustainable Westchester, on behalf of the Village of Hastings-on-Hudson, shall issue one or more requests for proposals to Suppliers to provide energy to participants and may then award a contract one or more contracts in accordance with the CCA Program.

C. Sustainable Westchester or the Village, if the Village so chooses, will then request individual customer data Customer-specific Data from the Distribution Utility in accordance with the CCA Program.

D. Sustainable Westchester or the Village, if the Village so chooses, and the selected supplier Suppliers(s) will then notify bundled customers Opt-out Eligible Customers of the contract terms and their opportunity to opt out of the CCA Program at no cost energy supply and/or CDG Credits.

E. In accordance with and for purposes of the CCA Framework Order, the existing distribution utility, Consolidated Edison Company of New York, Inc., Distribution Utility will provide to Sustainable Westchester aggregate and Customer-specific Data (including usage data, capacity tag obligations, account numbers, and service addresses) of all bundled customers Eligible Customers in the Village of Hastings-on-Hudson.

F. Sustainable Westchester and the Village of Hastings-on-Hudson will protect customer information as required by law, subject to the CCA Framework Order and the limitations of the New York State Freedom of Information Law.
§ 110-5. Choice of energy supplier; opt-out notice and Procedure.

A. The Village of Hastings-on-Hudson or in conjunction with the ESCO will notify, or will cause notification of, its residential and small commercial customers Opt-out Eligible Customers, by letter notice, of the Village's decision to establish Village establishing the CCA Program, of the contract terms with an ESCO- the Supplier, and of the opportunity to opt out of the CCA Program offerings.

B. The letter notice will be sent to each customer Opt-out Eligible Customer at the address provided by the Distribution Utility and explain the CCA Program and the material provisions of the ESCO Supplier contract, identify the methods by which the customer can opt out of the CCA Program, and provide information on how the customer can access additional information about the CCA Program.

C. The opt-out period shall be 20 days at least thirty (30) days.

D. CCA Program bundled customers, upon enrollment, will receive a welcome letter that will explain the customers' options for canceling the enrollment if they believe they were enrolled incorrectly or otherwise decide to withdraw from the CCA Program in favor of another supplier. The welcome letter also will explain that residential customers are entitled to the added protection of the mandated three-day rescission period as detailed in Section 5(B)(3) of the Uniform Business Practices.

§ 110-6. Verification and reporting.

Sustainable Westchester shall be responsible for filing an annual report with the Public Service Commission, which identifies the number of customers enrolled in the CCA Program by municipality and customer class, the number of customers who returned to utility service or service with another supplier during the reporting period, and the average cost of commodity supply by month for the reporting period as required by the CCA Framework Order.

SECTION 2. SEVERABILITY

If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

SECTION 3. EFFECTIVE DATE

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.
ROLL CALL VOTE

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CERTIFICATION

I, Anthony P. Costantini, Village Clerk of Hastings-on-Hudson, do hereby certify that I have compared the foregoing copy of the Resolution adopted at the Special Meeting of the Board of Trustees on August 16, 2022, with the original now remaining on file at this office and that the same is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Village of Hastings-on-Hudson this 17th day of August, 2022.

[Signature]

Anthony P. Costantini
Village Clerk
New York’s New Constitutional Environmental Bill of Rights: Impact and Implications

by Scott Fein and Tyler Otterbein*

Introduction

On November 2, 2021, New York voters approved an Amendment to the State Constitution’s Bill of Rights providing that: “Each person shall have the right to clean air and water, and to a healthful environment.” In those sixteen words, the right to a healthy environment was, for the first time, cloaked in constitutional protection in New York and deemed the equivalent to the sixteen current constitutional guarantees in the state Bill of Rights. Those rights include freedom of speech, trial by jury, religious liberty, habeas corpus, compensation for taking of private property, equal protection of law, and security against unreasonable searches and seizure.

There has been considerable commentary on the potential impact of the new Amendment, commonly referred to as the “Green Amendment.” The question yet unresolved is whether the Green Amendment will be no more than an abstract statement of a societal desire or a meaningful mechanism for citizens to safeguard their environment. This explainer outlines several facets of that question.

Why Have a Green Amendment?

In many ways, the New York State Constitution offers greater protection than its federal counterpart. The New York State Constitution encompasses positive rights in addition to negative rights. Positive rights provide citizens with a right to certain governmental actions, including in

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Tyler Otterbein is a current third year law student graduating from Albany Law School in May of 2022. He is from Buffalo, NY and attended Canisius High School before graduating from SUNY Albany with a BA in finance and management.

The authors would like to express appreciation for the assistance provided by Patrick Woods, the Deputy Director of the Government Law Center at Albany Law School.

2 N.Y. CONST., Art 1, § 19.
New York: welfare, education, and now a healthful environment. In contrast, negative rights found in the Federal Bill of Rights only guarantee protection against government action. The distinction is significant, between what the government cannot do and what it must do.³

Why would New York, a state whose environmental safeguards encompass thousands of regulations enforced by numerous state and local entities, need a new statement of environmental protection? It may be that the Green Amendment will provide a mechanism for citizen enforcement, including compelling state involvement, to address unresolved environmental issues. New York's Environmental Conservation Law permits citizens to bring a suit themselves only when the Department of Environmental Conservation has failed to enforce the existing environmental laws and regulations.⁴ The Green Amendment, by contrast, appears to offer individuals the opportunity to go further than the existing law, but exactly how much further is unclear.

The arguments likely to be asserted by those who wish to narrow the impact of the Green Amendment and those who wish to broaden its reach, are numerous. Several of the most obvious are addressed in the sections that follow.

Is the Green Amendment Self-Executing?

State and private entities called to defend a lawsuit based on the Green Amendment will likely assert that the provision cannot be “self-executing.” In other words, they will argue that the Green Amendment does not do anything by itself, but will only be effective after more implementing legislation is passed. That argument, which has been raised in connection with other constitutional amendments, is that an amendment requiring expenditure of public funds untethered to implementing legislative or executive action fundamentally shifts the development of state policy to the judiciary and away from the legislative and executive branches, improperly allowing the judiciary to reset state priorities and impact the state treasury.

Courts have accepted arguments that constitutional provisions are not “self-executing” with respect to other constitutional guarantees. For example, Article I, Section XI of the New York State Constitution requires, “That the legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” (Emphasis added). The New York Court of Appeals has interpreted this to mean that “the state offers all children the opportunity for a sound basic education,” but courts must still “defer to the Legislature in matters of policymaking particularly in a matter so vital as educational financing.”⁵ Similarly, Article XVII, Section 1 of the New York State Constitution provides that “The aid, care and support of the needy are public concerns and shall be provided by the state and such of its subdivisions, and in such manner and by such means as the legislature may from time to time determine.” (Emphasis added).

⁴ See N.Y. ECL § 71-1311.
The contrary argument is that the general rule is that constitutional provisions are presumptively self-executing. In contrast to the constitutional provisions referenced above, which explicitly reference further action by the legislature, there is no mention in the text of the Green Amendment of involvement of the legislature or legislative process as a predicate to implementation. Consequently, based on the plain text, it would seem that the Green Amendment is enforceable without additional legislation.

**What does “clean air and water, and a healthful environment” mean?**

The breadth and lack of specificity in the text of the Green Amendment has prompted concern among some. What do the phrases “clean air and water” and “healthful environment” mean in concrete terms? What is its scope, and how will courts determine whether the environment has been impinged upon? What if the source of the pollution was operating lawfully under New York law before the Green Amendment was passed? In the absence of guidance in the text of the Green Amendment, courts may be tempted to look to existing state and federal environmental regulations to provide the standard in cases in which a violation of the Amendment’s provisions is alleged.

However, if the courts’ application of the Green Amendment to existing activity is guided by current environmental statutes and regulations, the impact of the Amendment may prove to be illusory or redundant. In other words, if existing standards are used to determine what activities are allowed by the Green Amendment, then the addition of the Amendment to the New York State Constitution will not have raised the standard in any practical sense.

These views may have some merit, but at least two tangible benefits of the Green Amendment would nonetheless exist even if current environmental law guides how courts interpret what “clean air and water, and a healthful environment” means: (i) the Green Amendment may strengthen a community’s ability to compel the state to mitigate environmental problems that the State has not yet addressed, by providing a new cause of action beyond what is in the Environmental Conservation Law, and (ii) the Amendment may require the State to pause and reflect before enacting legislation and regulations that potentially infringe on this new constitutional right. As Professor Nicholas Robinson of Pace University noted, it is conceivable that citizens impacted by an as-of-yet unregulated hazardous contaminant or circumstance could now sue to compel the State to intercede. Ultimately, if existing government regulations prove inadequate in the face of emerging harms, the Green Amendment may provide a remedy.

**Is the Green Amendment actionable against private parties?**

An additional question is whether the Green Amendment is actionable against private parties. In other words, who can be sued for violating someone’s right “to clean air and water, and a healthful environment”? The Amendment allows enforcement against the government, this much

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is unambiguous. It appears less likely that the courts will allow an action to prevent pollution to be brought directly against private entities under the Green Amendment.

A comparison with several other provisions of the New York State Constitution informs this view. Article I, Section 11 provides that “No person shall because of race, color, creed or religion be subjected to any discrimination in his or her civil rights by any other person or any firm, corporation, or institution, or by the state or any agency or subdivision of the state.” (Emphasis added). In contrast, Article I, section 3, pertaining to the free exercise of religion, and Article I, section 8, protecting freedom of the press, make no reference to private entities and, with certain limited exceptions, have been found to impose a restriction only on the government.9

The proposition that New York’s Green Amendment applies only to government actors will likely soon be tested. In what appears to be the first case seeking relief under the Amendment, the plaintiff included as party defendants the private entity that owns and operates the landfill whose permit is being challenged, in addition to governmental entities—New York State, the New York State Department of Environmental Conservation, and New York City.10 At the time of this writing, the case is in the early stages of litigation. It seems inevitable, however, that the private defendant will move to dismiss the claims against it on this basis and that the courts will begin to address the issue.

**Who May Use the Green Amendment to Bring a Lawsuit?**

Does the Green Amendment mean that anyone at all can bring a lawsuit to protect the environment? Probably not.

Typically, citizens seeking to bring a lawsuit based on an alleged constitutional violation need to demonstrate “standing,” a legal term of art roughly meaning that they are personally affected by the action and that prevailing in their suit would solve their problem. Standing to commence an action under the Green Amendment will likely comport with existing law on when plaintiffs may bring environmental lawsuits.

Ordinarily, a litigant must establish an “injury-in-fact,” i.e. that they are personally affected, through a showing of actual or imminent harm particular to themselves. The concept has been broadened in some measure in environmental cases to provide that “a person who can prove that he or she uses and enjoys a natural resource more than most other members of the public has standing . . . to challenge a governmental action.”11 In certain instances, the concept has been broadened even further, with courts holding that standing limitations “should not be heavy handed” such that “a showing of special damage or actual injury is not always necessary to establish a party’s standing” and “in some instances, the party’s particular relationship to the subject of the action may give rise to a resumption of standing.”12

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9 See 20 N.Y. JUR.2D CONSTITUTIONAL LAW § 263.
Similarly, the existing rule governing when a person or company can participate in ongoing litigation (referred to as “intervention”) presumably will apply. Intervention is typically allowed when a private party may be adversely impacted by a lawsuit. More specifically, New York's Civil Practice Law and Rules provide that, “[A]ny person shall be permitted to intervene in any action when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment.”

What Are the Implications of the Green Amendment on Environmental Justice?

The concept of environmental justice seeks to ensure that no single community, particularly low income and minority communities, will bear a disproportionate share of the adverse environmental consequences from property development and industry. The pursuit by communities of environmental justice has not been without its challenges. Impacted communities need to organize, locate funds to underwrite their effort, and oppose often well-funded project applicants who will maintain that their proposals satisfy existing environmental regulations. The Green Amendment may provide impacted communities an additional tool to advance their views. Not only will these communities have the opportunity to demonstrate in the regulatory process that the environmental footprint of a proposed project may have a disproportionate impact, but they now also may assert that the project would contravene the community’s constitutional right to a healthy environment.

Conversely, there is also a possibility that the Green Amendment may be used to block changes designed to help low-income New Yorkers. For example, higher-income communities opposed to the construction of new low-income housing in their area may argue that increased housing density that comes with new emissions from vehicles and buildings may impinge upon their fundamental right to a healthy environment.

Can Citizens Receive Monetary Compensation Based on Violations of the Green Amendment?

What if, despite the Green Amendment, New York State or its localities approve permits for environmentally destructive activities? What if, faced with an emerging environmental issue, New York State or its localities choose to do nothing? Under certain circumstances, New York courts recognize an implied cause of action, including one for compensatory damages (i.e. an award of money), based upon a violation of the New York State Constitution. However, the circumstances permitting a suit for money damages are limited. An action seeking recovery for a “constitutional tort,” in other words a constitutional violation for which someone can sue the government, can be brought only when there is no other remedy available or the claim is not duplicative of another statutory or common law cause of action.

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13 CPLR 1013.
14 CPLR 1012.
What does that mean for suits for damages based on the Green Amendment? It's fair to suggest that, if a common law remedy embraced in statute is not readily available to address an environmental concern or the concern is ignored by the government, the Green Amendment may provide a cause of action giving rise to money damages from the State or locality. At the very least, the prospect that damages may be awarded to a plaintiff could serve as catalyst for state agencies and local governments to take the concerns about environmental harms more seriously at the outset.

**Will the Green Amendment Impact Local Control Over Land Use?**

Some New York localities have expressed concern that the Green Amendment could erode their land use oversight authority. At this early stage, the implications are unknown, but several observations bear note. First, New York’s State Environmental Quality Review Act (SEQRA) is robust and requires state agencies and local governments to consider the environmental impact of any discretionary government action. SEQRA requires that discretionary actions mitigate such impacts to the extent practicable, and balance any unmitigated impacts against other “social, economic, and other essential considerations.” It remains to be seen whether the Green Amendment is consistent with SEQRA’s balancing test or elevates environmental protection above other considerations.

It also bears note that the Green Amendment may enhance local authority to limit land use. While the Green Amendment might give private parties an opportunity to challenge land use approvals, localities could theoretically use the Amendment to extend their land use power by relying upon the Amendment to deny approval of projects that might otherwise satisfy the provisions of SEQRA.

**Conclusion**

Environmental concerns have emerged as the central issue of our time. New York’s addition of the Green Amendment to the New York State Constitution, following in the footsteps of other states like Pennsylvania and Montana, shows that New York intends to take those issues seriously. However, questions remain about whether the Green Amendment will not simply be an artifact but, rather, an important tool to allow communities to seek to safeguard their environment and compel state and local governments to act to prevent environmental harms.

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**Additional Resources Consulted:**


