

## Client Alert



### Climate Mobilization Act

*By Jeremy A. Cohen and Christopher J. Palmese*

On April 18, 2019, the New York City Council passed legislation, referred to as the Climate Mobilization Act, which includes bills designed to aggressively reduce carbon emissions produced by New York City's buildings. According to a study conducted by the New York City Mayor's Office, buildings currently account for almost 70% of the city's green-house gas emissions. The bills set heavy fines for building owners' non-compliance. Notwithstanding strong objections from the real estate industry, the bills found overwhelming support in the New York City Council and passed with a vote of 45-2.

To comply with the bills, Covered Buildings (defined as buildings that exceed 25,000 gross square feet, two or more buildings on the same tax lot that together exceed 50,000 gross square feet, or two or more condominium buildings governed by the same board of managers and that together exceed 50,000 gross square feet) will need to be retrofitted with conservation features such as new windows and efficient heating systems and insulation so that, beginning on May 1, 2024, Covered Buildings' emissions are reduced below the prescribed levels, all in an effort to reduce emissions by 40% below 2005 levels by the year 2030 and by 80% below 2005 levels by the year 2050. Owners of Covered Buildings that fail to comply by May 1, 2024 will face hefty annual fines upon filing annual certifications on May 1, 2025. Building owners or managers will have to submit annual building emissions assessments to the newly created Office of Building Energy and Emissions Performance on May 1 of each year certifying compliance for the previous twelve month period.

Penalties will be costly for non-compliant owners, namely, \$268 per metric ton of emissions above the permitted emissions for the reporting year. Additionally, late-filers will face monthly penalties in the amount of \$.50 per gross square footage of the covered building, subject to extension (where, notwithstanding the use of its good faith efforts, the building owner is unable to timely file the required report).

All may not be lost for a building that fails to meet the emissions caps — the bills create alternative, but sometimes costly, pathways to compliance. In some limited circumstances, adjustments will be allowed for buildings which exist on the effective date of the new law or for which a permit for construction was issued prior to such date. Additionally, the purchase of certain greenhouse gas offsets and renewable energy credits and the use of clean distributed energy resources can be used to offset a building's reported annual emissions. The bills also contain numerous exceptions, including for certain city-owned buildings, NYCHA buildings, rent regulated accommodations, buildings that are three stories or less where the HVAC systems and hot water heating systems are held by each individual dwelling unit owner and with no HVAC system or hot water system serving more than two units. The bills also include exceptions based on the potential burdens of compliance, which will be assessed on a case-by-case basis.

Among the specific bills included in the Act are the following:

#### **Int. 1253 - Building Retrofits (enacted as local law 97)**

This bill establishes the Office of Building Energy Performance, sets greenhouse gas emissions limits for existing buildings and

expands existing retro-commissioning requirements to certain buildings. It also creates an online portal for the submission of annual building emissions assessments by owners of Covered Buildings.

This bill also creates an advisory group to study and set future emissions limits and create a carbon trading scheme that can be utilized by building owners to offset some carbon emissions or monetize savings produced by their own Covered Buildings.

### **Int. 1252 - Property Assessed Clean Energy (PACE) Financing (enacted as local law 96)**

This bill establishes a private sustainable energy loan program to provide qualifying building owners with loans to help cover the costs of renewable energy systems, energy efficiency improvements, related energy audits and renewable energy system feasibility studies. These loans will generally require no money down, the term of the loans will be the estimated useful life of such systems or improvements and the interest rate will be fixed at the time of the making of the loan. The assessments relating to these loans will enjoy a lien priority similar to real estate taxes and, as such, will have priority over a recorded mortgage.

### **Int. 1032 - Green Roofs for New Construction (enacted as local law 94)**

This bill requires that the rooftops of new buildings in occupancy groups B, I-4, M or S-2 (as defined in Section BC 302 of the New York City building code) and existing buildings which are replacing their roof structure be covered in plants (to filter pollutants and add agricultural space), solar panels (to generate renewable energy generation and reduce air pollution), small wind turbines (to generate heat and electric power in an environmentally conscious manner) or a combination thereof.

### **Int. 276-A - Green Roofs on Smaller Buildings (enacted as local law 92)**

This bill adjusts the “green roof” requirements established by Int. No. 1032-A for buildings five stories or less and provides for adjusting the requirements of Int. Non 1032-A for certain buildings (those receiving certain tax exceptions or owned by HPD) for a five year period.

## **The Path Forward**

According to the Real Estate Board of New York, the total cost of these deep retrofits city-wide could be as much as \$4 billion, and will fall mainly on the owners of commercial buildings and condominiums and cooperatives, but may also be passed through, if permitted under applicable building governing documents by way of monthly or special assessments, to tenants and shareholders.

Although the exact cost and path forward for many remains unclear (for example, the exact criteria for some exemptions and the mechanism and cost for purchasing and selling offsets or credits remains undefined), these new laws are poised to be the largest disruptor in New York City real estate since perhaps the enactment of the Commissioners’ Plan of 1811, which created Manhattan’s famous grid system.

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