

2361--B

2009-2010 Regular Sessions

I N   S E N A T E

February 18, 2009

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Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to establishing an energy service company consumers bill of rights

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The general business law is amended by adding a new section  
2     349-d to read as follows:  
3     S 349-D. ENERGY SERVICES COMPANY CONSUMERS BILL OF RIGHTS. 1. FOR THE  
4     PURPOSE OF THIS SECTION:  
5         (A) "ENERGY SERVICES" SHALL MEAN ELECTRICITY AND/OR NATURAL GAS;  
6         (B) "ENERGY SERVICES COMPANY" OR "ESCO" SHALL MEAN AN ENTITY ELIGIBLE  
7     TO SELL ENERGY SERVICES TO END-USE CUSTOMERS USING THE TRANSMISSION OR  
8     DISTRIBUTION SYSTEM OF A UTILITY;  
9         (C) "CUSTOMER" SHALL MEAN ANY PERSON WHO IS SOLD OR OFFERED AN ENERGY  
10    SERVICES CONTRACT BY AN ESCO (I) FOR RESIDENTIAL UTILITY SERVICE, OR  
11    (II) THROUGH DOOR-TO-DOOR SALES; AND  
12         (D) "DOOR-TO-DOOR SALES" SHALL MEAN THE SALE OF ENERGY SERVICES IN  
13    WHICH THE ESCO OR THE ESCO'S REPRESENTATIVE PERSONALLY SOLICITS THE  
14    SALE, AND THE BUYER'S AGREEMENT OR OFFER TO PURCHASE IS MADE AT A PLACE  
15    OTHER THAN THE PLACE OF BUSINESS OF THE SELLER; PROVIDED THAT SUCH TERM  
16    SHALL NOT INCLUDE ANY SALE WHICH IS CONDUCTED AND CONSUMMATED ENTIRELY  
17    BY MAIL, TELEPHONE OR OTHER ELECTRONIC MEANS, OR DURING A SCHEDULED  
18    APPOINTMENT AT THE PREMISES OF A BUYER OF NONRESIDENTIAL UTILITY  
19    SERVICE, OR THROUGH SOLICITATIONS OF COMMERCIAL ACCOUNTS AT TRADE OR  
20    BUSINESS SHOWS, CONVENTIONS OR EXPOSITIONS.  
21    2. ANY PERSON WHO SELLS OR OFFERS FOR SALE ANY ENERGY SERVICES TO A  
22    CUSTOMER FOR OR ON BEHALF OF AN ESCO SHALL (A) PROPERLY IDENTIFY HIMSELF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD03848-07-9

1 OR HERSELF AND THE ENERGY SERVICES COMPANY OR COMPANIES WHICH HE OR SHE  
2 REPRESENTS; (B) EXPLAIN THAT HE OR SHE DOES NOT REPRESENT A DISTRIBUTION  
3 UTILITY; (C) EXPLAIN THE PURPOSE OF THE SOLICITATION; (D) PROVIDE EACH  
4 PROSPECTIVE CUSTOMER WITH A COPY OF THE "ESCO CONSUMERS BILL OF RIGHTS"  
5 DEVELOPED BY THE PUBLIC SERVICE COMMISSION, THE LONG ISLAND POWER  
6 AUTHORITY, THE STATE CONSUMER PROTECTION BOARD AND THE DEPARTMENT OF  
7 LAW; AND (E) PROVIDE ANY WRITTEN MATERIALS, INCLUDING CONTRACTS AND THE  
8 "ESCO CONSUMERS BILL OF RIGHTS", IN THE SAME LANGUAGE UTILIZED TO SOLIC-  
9 IT THE PROSPECTIVE CUSTOMER.

10 3. NO PERSON WHO SELLS OR OFFERS FOR SALE ANY ENERGY SERVICES FOR, OR  
11 ON BEHALF OF, AN ESCO SHALL ENGAGE IN ANY DECEPTIVE ACTS OR PRACTICES IN  
12 THE MARKETING OF ENERGY SERVICES.

13 4. NO CONTRACT FOR PROVISION OF ENERGY SERVICES BY AN ESCO SHALL  
14 PROVIDE FOR ANY CUSTOMER PREPAYMENT FOR ENERGY SERVICES.

15 5. NO CONTRACT FOR PROVISION OF ENERGY SERVICES BY AN ESCO SHALL  
16 REQUIRE THE CUSTOMER TO PAY ANY FEE FOR TERMINATION OR EARLY CANCELLA-  
17 TION OF A CONTRACT IN EXCESS OF (A) ONE HUNDRED DOLLARS; OR (B) TWICE  
18 THE ESTIMATED BILL FOR ENERGY SERVICES FOR AN AVERAGE MONTH. TO CHARGE A  
19 FEE GREATER THAN ONE HUNDRED DOLLARS, AN ESCO MUST HAVE PROVIDED THE  
20 CUSTOMER, AT THE TIME THAT THE CONTRACT IS OFFERED, WITH AN ESTIMATE OF  
21 THE AVERAGE MONTHLY BILL THAT CUSTOMER WOULD BE CHARGED FOR ENERGY  
22 SERVICES.

23 6. NO MATERIAL CHANGE SHALL BE MADE IN THE TERMS OR DURATION OF ANY  
24 CONTRACT FOR THE PROVISION OF ENERGY SERVICES BY AN ESCO WITHOUT THE  
25 EXPRESS CONSENT OF THE CUSTOMER. THIS SHALL NOT RESTRICT AN ESCO FROM  
26 RENEWING A CONTRACT BY CLEARLY INFORMING THE CUSTOMER IN WRITING, NOT  
27 LESS THAN THIRTY DAYS NOR MORE THAN SIXTY DAYS PRIOR TO THE RENEWAL  
28 DATE, OF THE RENEWAL TERMS AND OF HIS OR HER OPTION NOT TO ACCEPT THE  
29 RENEWAL OFFER; PROVIDED, HOWEVER, THAT NO FEE PURSUANT TO SUBDIVISION  
30 FIVE OF THIS SECTION SHALL BE CHARGED TO A CUSTOMER WHO OBJECTS TO SUCH  
31 RENEWAL NOT LATER THAN THREE BUSINESS DAYS AFTER RECEIVING THE FIRST  
32 BILLING STATEMENT FROM THE ESCO UNDER THE TERMS OF THE CONTRACT AS  
33 RENEWED. THE PUBLIC SERVICE COMMISSION AND THE LONG ISLAND POWER  
34 AUTHORITY MAY ADOPT ADDITIONAL REGULATIONS GOVERNING THE RENEWAL PROC-  
35 ESS.

36 7. IN EVERY CONTRACT FOR ENERGY SERVICES AND IN ALL MARKETING MATERI-  
37 ALS PROVIDED TO PROSPECTIVE PURCHASERS OF SUCH CONTRACTS, ALL VARIABLE  
38 CHARGES SHALL BE CLEARLY AND CONSPICUOUSLY IDENTIFIED.

39 8. ANY CONTRACT FOR ENERGY SERVICES WHICH DOES NOT COMPLY WITH THE  
40 APPLICABLE PROVISIONS OF THIS SECTION SHALL BE VOID AND UNENFORCEABLE AS  
41 CONTRARY TO PUBLIC POLICY. ANY WAIVER BY A BUYER OF ENERGY SERVICES OF  
42 THE PROVISIONS OF THIS SECTION SHALL BE DEEMED VOID AND UNENFORCEABLE BY  
43 THE ESCO AS CONTRARY TO PUBLIC POLICY.

44 9. THE ATTORNEY GENERAL, UPON HIS OR HER OWN MOTION OR UPON REFERRAL  
45 FROM THE PUBLIC SERVICE COMMISSION, THE LONG ISLAND POWER AUTHORITY OR  
46 THE STATE CONSUMER PROTECTION BOARD, MAY BRING A CIVIL ACTION AGAINST  
47 ANY ENERGY SERVICES COMPANY THAT VIOLATES ANY PROVISION OF THIS SECTION  
48 AND MAY RECOVER (A) A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS  
49 PER VIOLATION; AND (B) COSTS AND REASONABLE ATTORNEY'S FEES. IN ANY SUCH  
50 PROCEEDING THE COURT MAY DIRECT RESTITUTION.

51 10. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL  
52 PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF  
53 ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME  
54 TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER  
55 ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH  
56 SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF

1 DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO  
2 TEN THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR  
3 KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTOR-  
4 NEY'S FEES TO A PREVAILING PLAINTIFF.

5 S 2. The public service commission shall amend its rules and regu-  
6 lations governing energy service to residential customers at part 11 of  
7 title 16 of the New York state codes, rules and regulations and its  
8 rules and regulations governing energy service to nonresidential custom-  
9 ers at part 13 of title 16 of the New York state codes, rules and regu-  
10 lations to implement the provisions of section one of this act. The Long  
11 Island power authority shall amend its regulations adopted pursuant to  
12 section 1020-f of the public authorities law to implement the provisions  
13 of section one of this act.

14 S 3. Nothing in this act shall limit the existing authority of the  
15 public service commission or the Long Island power authority to limit,  
16 suspend or revoke the eligibility of an energy services company to sell  
17 or offer for sale any energy services for violations of any statute,  
18 rule, regulation or policy enforceable by such commission or authority.

19 S 4. The public service commission, the Long Island power authority,  
20 the state consumer protection board and the department of law shall  
21 develop a short, plain language statement of an "ESCO consumers bill of  
22 rights" which shall summarize the protections afforded to consumers of  
23 energy services pursuant to section 349-d of the general business law  
24 and other applicable laws.

25 S 5. If any clause, sentence, paragraph, section or part of this act  
26 be adjudged by any court of competent jurisdiction to be invalid, such  
27 judgment shall not affect, impair or invalidate the remainder hereof but  
28 shall be applied in its operation to the clause, sentence, paragraph,  
29 section or part hereof directly involved in the controversy in which  
30 such judgment shall have been rendered.

31 S 6. This act shall take effect on the one hundred fiftieth day after  
32 it shall have become a law and shall apply to all energy services sold  
33 or offered for sale on or after such date; provided, however, that the  
34 public service commission and the Long Island power authority are imme-  
35 diately authorized and directed to take any and all actions, including  
36 but not limited to the promulgation of any necessary rules and regu-  
37 lations, necessary to implement the provisions of this act on its effec-  
38 tive date.