

STATE OF NEW YORK

3166

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. DINOWITZ, ENGLEBRIGHT, SIMON, DICKENS, SAYEGH, GOTTFRIED -- Multi-Sponsored by -- M. of A. COOK, GRIFFIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to requiring the registration of energy brokers and energy consultants

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

1 Section 1. Section 66-p of the public service law, as added by chapter
2 705 of the laws of 2019, is renumbered to be section 66-q and a new
3 section 66-r is added to read as follows:

4 § 66-r. Registration of energy brokers and energy consultants. 1.
5 Definitions. For the purposes of this section, the following terms shall
6 have the following meanings unless the context indicates otherwise:

7 a. "Broker compensation" means any payment made to an energy broker or
8 energy consultant for the purposes of securing or procuring of energy
9 for the end-use customer, or advising on the securing or procuring of
10 energy for the end-use consumer.

11 b. "Customer disclosure label" means the statement an energy service
12 company must provide a customer with whom it enters into a sales agree-
13 ment pursuant to the rules and regulations of the public service commis-
14 sion.

15 c. "Energy broker" means an entity that assumes the contractual and
16 legal responsibility for the sale of electric supply service, trans-
17 mission or other services to end-use retail customers, but does not take
18 title to any of the electricity sold, or an entity that assumes the
19 contractual and legal obligation to provide for the sale of natural gas
20 supply service, transportation or other services to end-use retail
21 customers, but does not take title to any of the natural gas sold.

22 d. "Energy consultant" means any person, firm, association or corpo-
23 ration who acts as broker in soliciting, negotiating or advising any

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

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1 electric or natural gas contract, or acts as an agent in accepting any
2 electric or natural gas contract on behalf of an ESCO.

3 e. "Energy service company" or "ESCO" means an entity eligible to sell
4 electricity and/or natural gas to end-use customers using the trans-
5 mission or distribution system of a utility corporation.

6 2. Acting without registering with the commission. a. (i) No person,
7 firm, association or corporation shall act as an energy broker or energy
8 consultant without first registering with the commission.

9 (ii) Any person, firm, association or corporation who or which acts as
10 an energy broker or energy consultant in violation of this subdivision
11 shall, in addition to other penalties prescribed by law, be subject to a
12 penalty not to exceed five thousand dollars for each violation.

13 b. No person, firm, association or corporation shall identify or hold
14 himself, herself or itself out to be an energy broker or energy consult-
15 ant unless registered with the commission.

16 c. No person shall accept any commission, service fee, brokerage or
17 other valuable consideration for selling, soliciting or negotiating an
18 energy contract in this state if that person is required to be regis-
19 tered under this section and is not so registered, unless stated other-
20 wise herein.

21 3. Energy broker and energy consultant registration. a. An energy
22 broker or energy consultant shall register with the commission authoriz-
23 ing such registered energy broker or energy consultant to act as an
24 energy broker or energy consultant in a manner prescribed by the commis-
25 sion; provided that such: (i) energy broker or energy consultant demon-
26 strates financial accountability as evidenced by a bond or other method
27 of financial accountability in an amount not less than one hundred thou-
28 sand dollars; and (ii) energy consultant demonstrates financial account-
29 ability as evidenced by a bond or other method of financial accountabil-
30 ity in an amount not less than fifty thousand dollars.

31 b. The commission may refuse to register or revoke a registration if,
32 in the commission's judgment, the energy broker or energy consultant
33 registering has given cause for the revocation or suspension of oper-
34 ations.

35 c. Each registered energy broker or energy consultant shall annually
36 pay the commission a five hundred dollar registration fee.

37 d. Each registered energy broker or energy consultant shall notify the
38 commission upon changing his, her or its legal name.

39 4. Disclosure of compensation. a. Energy brokers and energy consult-
40 ants shall be required to disclose their form and amount of compensation
41 to customers via a conspicuous statement on any such contract or agree-
42 ment between the energy agent, energy consultant, energy broker or ener-
43 gy intermediary and its customer.

44 b. If an energy service company collects broker compensation on behalf
45 of an energy broker or energy consultant, such broker compensation shall
46 be added as a provision to the customer disclosure label and shall
47 reflect the amount and method of broker compensation.

48 5. Rebates prohibited. a. No energy broker, energy consultant or any
49 other person acting for or on behalf of the energy broker or energy
50 consultant shall offer or make, directly or indirectly, any rebate of
51 any portion of the fee, premium or charge made, or pay or give to any
52 applicant, or to any person, firm, or corporation acting as agent,
53 representative, attorney, or employee of the energy rate payer or any
54 interest therein, either directly or indirectly, any commission, any
55 part of its fees or charges, or any other consideration or valuable
56 thing, as an inducement for, or as compensation for, any energy supply

1 or energy-related business, nor shall any applicant, or any person,
2 firm, or corporation acting as agent, representative, attorney, or
3 employee of the energy rate payer or of the prospective energy rate
4 payer or anyone having any interest in the real property knowingly
5 receive, directly or indirectly, any such rebate or other consideration
6 or valuable thing. Any person or entity who violates this subdivision
7 shall be subject to a penalty equal to the greater of: (i) five thousand
8 dollars; or (ii) up to ten times the amount of any compensation or
9 rebate received or paid.

10 b. For the purposes of this section, "an inducement for, or as compen-
11 sation for, any energy supply business" shall mean a benefit given with
12 the intention to compensate or offer compensation, directly or indirect-
13 ly, for any past or present placement for a particular piece of energy
14 supply or energy-related business to any applicant, or person, firm, or
15 corporation acting as agent, representative, attorney, or employee of
16 the energy rate payer, lessee, mortgagee or the prospective energy rate-
17 payer, or any interest therein. Nothing contained in subdivision one of
18 this section to the contrary shall prohibit any energy supplier corpo-
19 ration, energy broker, or energy consultant, or any other person acting
20 for or on behalf of the energy service company, energy broker or energy
21 consultant from undertaking any usual and customary marketing activity
22 aimed at acquainting present and prospective customers with the advan-
23 tages of using a particular energy supplier, energy broker, or energy
24 consultant that are not intended for the purpose of a reward for the
25 future placement of, or the past placement of, a particular piece of
26 energy supply business.

27 § 2. This act shall take effect on the one hundred eightieth day after
28 it shall have become a law.