

5410

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. BRENNAN, CLARK, GOTTFRIED, ORTIZ, CASTRO, GREENE
-- Multi-Sponsored by -- M. of A. GLICK, JACOBS, JOHN, MAISEL, MILL-
MAN, NOLAN -- read once and referred to the Committee on Energy

AN ACT to amend the general business law and the public service law, in
relation to limiting rates identified and deposits required by elec-
tricity redistributors

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

1 Section 1. Legislative findings and declaration of purpose. The legis-
2 lature hereby finds and declares:
3 (a) There is a significant number of landlords in New York that redis-
4 tribute electricity purchased from a utility or other person to their
5 non-residential tenants. For example, in nineteen hundred eighty-eight
6 approximately twenty-six percent of commercial/industrial electricity
7 sales of Consolidated Edison Company of New York, Inc. were to landlords
8 who provided electricity to their non-residential tenants. The rates
9 charged by those landlords, or "electricity redistributors", to non-re-
10 sidential tenants and the manner in which such rates are charged are not
11 currently regulated by the public service commission. In the absence of
12 regulation, some landlords in New York resell electricity to their non-
13 residential tenants at an excessive profit, and fail to disclose
14 adequately the rate or the basis of the charge for electricity and the
15 terms under which such charge may be subject to change.
16 (b) Such practices, and the resulting perception of high or sharply
17 rising energy costs, discourage businesses from entering and remaining
18 in New York. Thus, there is a need to protect non-residential tenants
19 from such practices. This protection can best be accomplished by limit-
20 ing the rates identified and deposits required by electricity redistrib-
21 utors, and requiring electricity redistributors to disclose fully and
22 clearly to a non-residential tenant the tenant's charges and costs
23 relating to use of electricity in the tenant's premises.

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

LBD07592-01-9

1 S 2. The general business law is amended by adding a new article 30-B
2 to read as follows:

3 ARTICLE 30-B

4 ELECTRICITY REDISTRIBUTORS

5 SECTION 641. DEFINITIONS.

6 642. LIMITATION ON RATES IDENTIFIED BY ELECTRICITY REDISTRIBU-
7 TORS.

8 643. DEPOSITS.

9 644. ACCESS TO AND RETENTION OF RECORDS.

10 645. NOTICE TO TENANT.

11 646. ARBITRATION.

12 647. DISCONTINUANCE OF IDENTIFICATION OF ELECTRICITY CHARGES.

13 648. LOCAL CONDITIONS ON BENEFITS.

14 649. VIOLATIONS AND PENALTIES.

15 649-A. RULES AND REGULATIONS.

16 S 641. DEFINITIONS. AS USED IN THIS ARTICLE:

17 1. "CHARGES FOR ACTUAL ELECTRICITY USED" MEANS DEMAND, ENERGY AND FUEL
18 ADJUSTMENT CHARGES, ANY TAXES AND TAX SURCHARGES THEREON, AND ANY OTHER
19 RELATED UTILITY CHARGES SPECIFICALLY AUTHORIZED TO BE TREATED AS CHARGES
20 FOR ACTUAL ELECTRICITY IN REGULATIONS PROMULGATED BY THE COMMISSION, BUT
21 SHALL NOT INCLUDE PENALTIES FOR LATE PAYMENT OR ASSESSMENTS OR CHARGES
22 FOR ANY DISTRIBUTION-RELATED FACILITIES;

23 2. "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION OF THE STATE OF
24 NEW YORK;

25 3. "DISTRIBUTION-RELATED FACILITIES" MEANS ANY AND ALL METERS, WIRES,
26 TRANSFORMERS AND OTHER EQUIPMENT LOCATED AT A BUILDING AND USED TO
27 SUPPLY ELECTRICITY WITHIN SUCH BUILDING;

28 4. "ELECTRICITY REDISTRIBUTOR" MEANS ANY LANDLORD OR TENANT OF A
29 BUILDING OR AGENT THEREOF WHO PURCHASES ELECTRICITY FROM A UTILITY OR
30 ANY OTHER PERSON, CORPORATION OR ENTITY, AND ON A METERED OR UNMETERED
31 BASIS RESELLS OR OTHERWISE REDISTRIBUTES SUCH ELECTRICITY TO ONE OR MORE
32 NON-RESIDENTIAL TENANTS IN SUCH BUILDING, AND IDENTIFIES TO SUCH TENANTS
33 CHARGES FOR SUCH ELECTRICITY; AND

34 5. "UTILITY" MEANS ANY ELECTRIC CORPORATION SUBJECT TO THE JURISDIC-
35 TION AND GENERAL SUPERVISION OF THE COMMISSION.

36 S 642. LIMITATION ON RATES IDENTIFIED BY ELECTRICITY REDISTRIBUTORS.
37 1. NO ELECTRICITY REDISTRIBUTOR SHALL BILL OR OTHERWISE CHARGE ANY NON-
38 RESIDENTIAL TENANT FOR ELECTRICITY FURNISHED, SUPPLIED OR OTHERWISE
39 REDISTRIBUTED TO SUCH TENANT'S PREMISES OR TO ANY OTHER TENANT PREMISES
40 AT A RATE WHICH EXCEEDS THE MAXIMUM ALLOWABLE RATE FOR ELECTRICITY AS
41 DETERMINED IN ACCORDANCE WITH PARAGRAPHS (A) AND (B) OF THIS SUBDIVI-
42 SION, PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION IS INTENDED TO
43 LIMIT OR OTHERWISE RESTRICT AMOUNTS THAT AN ELECTRICITY REDISTRIBUTOR
44 CAN CHARGE AS RENT TO NON-RESIDENTIAL TENANTS. FOR PURPOSES OF THIS
45 SUBDIVISION, "RENT" SHALL NOT INCLUDE CHARGES FOR ACTUAL ELECTRICITY
46 USED IN PREMISES LEASED OR OCCUPIED BY NON-RESIDENTIAL TENANTS.

47 (A) WHERE AN ELECTRICITY REDISTRIBUTOR FURNISHES ELECTRICITY TO A
48 NON-RESIDENTIAL TENANT IN A BUILDING ON A METERED BASIS, SUCH TENANT
49 SHALL BE CHARGED FOR ACTUAL ELECTRICITY USED IN THE PREMISES LEASED OR
50 OCCUPIED BY SUCH TENANT, AS MEASURED BY A PROPERLY INSTALLED AND OPERAT-
51 ING METER, AT A RATE NOT TO EXCEED THE RATE THAT IS CHARGED TO ELECTRIC-
52 ITY REDISTRIBUTORS BY THE UTILITY THAT IS PROVIDING ELECTRICITY SERVICE
53 IN THE SERVICE AREA WHERE SUCH BUILDING IS LOCATED, PLUS AN ADDITIONAL
54 AMOUNT NOT TO EXCEED TWELVE PERCENT OF CHARGES FOR ACTUAL ELECTRICITY
55 USED. WHERE THERE IS NO DEMAND METER TO MEASURE SUCH TENANT'S INDIVIDUAL
56 DEMAND, THE ELECTRICITY REDISTRIBUTOR SHALL CONVERT THE TOTAL DEMAND

1 CHARGE FOR THE BUILDING TO AN AVERAGE CHARGE PER KILOWATT HOUR, WHICH
2 AVERAGE CHARGE SHALL BE MULTIPLIED BY SUCH TENANT'S TOTAL KILOWATT HOUR
3 USAGE TO CALCULATE SUCH TENANT'S DEMAND CHARGE. IN ADDITION, WHERE THE
4 CHARGE TO SUCH ELECTRICITY REDISTRIBUTOR INCLUDES A RATE VARYING WITH
5 TIME OF USE AND THERE IS NO METER TO MEASURE SUCH TENANT'S DAILY PEAK
6 USAGE, THE ELECTRICITY REDISTRIBUTOR SHALL AGGREGATE THE PEAK AND
7 OFF-PEAK DEMAND AND ENERGY COSTS FOR THE BUILDING AND CHARGE ALL NON-RE-
8 SIDENTIAL TENANTS IN THE BUILDING AT A RATE EQUAL TO SUCH ELECTRICITY
9 REDISTRIBUTOR'S AVERAGE DEMAND AND ENERGY COSTS PER KILOWATT OR KILOWATT
10 HOUR, AS APPROPRIATE.

11 (B) (I) WHERE AN ELECTRICITY REDISTRIBUTOR FURNISHES ELECTRICITY TO A
12 NON-RESIDENTIAL TENANT ON AN UNMETERED BASIS, SUCH TENANT SHALL BE
13 CHARGED FOR ELECTRICITY USED IN THE PREMISES LEASED OR OCCUPIED BY SUCH
14 TENANT AN AMOUNT DETERMINED BY ONE OF THE FOLLOWING METHODS, AT THE
15 OPTION OF SUCH ELECTRICITY REDISTRIBUTOR:

16 (A) A CHARGE FOR ELECTRICITY BASED UPON A SURVEY CONDUCTED OR PAID FOR
17 BY SUCH ELECTRICITY REDISTRIBUTOR OF THE ESTIMATED ACTUAL ELECTRICITY
18 USED BY SUCH TENANT IN SUCH PREMISES, AT A RATE NOT TO EXCEED THE RATE
19 THAT IS CHARGED TO ELECTRICITY REDISTRIBUTORS BY THE UTILITY THAT IS
20 PROVIDING ELECTRICITY SERVICE IN THE SERVICE AREA WHERE SUCH BUILDING IS
21 LOCATED, PLUS AN ADDITIONAL AMOUNT NOT TO EXCEED TWELVE PERCENT OF SUCH
22 RATE. SUCH RATE SHALL ONLY INCLUDE CHARGES FOR ACTUAL ELECTRICITY USED.
23 WHERE SUCH SURVEY DOES NOT MEASURE SUCH TENANT'S INDIVIDUAL DEMAND, SUCH
24 ELECTRICITY REDISTRIBUTOR SHALL CONVERT THE TOTAL DEMAND CHARGE FOR THE
25 BUILDING TO AN AVERAGE CHARGE PER KILOWATT HOUR, WHICH AVERAGE CHARGE
26 SHALL BE MULTIPLIED BY SUCH TENANT'S ESTIMATED TOTAL KILOWATT HOUR USAGE
27 DERIVED FROM SUCH SURVEY, TO CALCULATE SUCH TENANT'S DEMAND CHARGE. IN
28 ADDITION, WHERE THE CHARGE TO SUCH ELECTRICITY REDISTRIBUTOR INCLUDES A
29 RATE VARYING WITH TIME OF USE AND SUCH SURVEY DOES NOT MEASURE SUCH
30 TENANT'S DAILY PEAK USAGE, SUCH ELECTRICITY REDISTRIBUTOR SHALL AGGRE-
31 GATE THE PEAK AND OFF-PEAK DEMAND AND ENERGY COSTS FOR THE BUILDING AND
32 CHARGE ALL NON-RESIDENTIAL TENANTS IN THE BUILDING AT A RATE EQUAL TO
33 SUCH ELECTRICITY REDISTRIBUTOR'S AVERAGE DEMAND AND ENERGY COSTS PER
34 KILOWATT OR KILOWATT HOUR, AS APPROPRIATE; OR

35 (B) A CHARGE FOR ELECTRICITY BASED UPON SUCH TENANT'S PROPORTIONATE
36 SHARE OF THE ACTUAL COST OF ELECTRICITY FOR THE ENTIRE BUILDING, PLUS AN
37 ADDITIONAL AMOUNT NOT TO EXCEED TWELVE PERCENT OF SUCH CHARGES. SUCH
38 COST SHALL ONLY INCLUDE CHARGES FOR ACTUAL ELECTRICITY USED. SUCH SHARE
39 SHALL BE DETERMINED BY A SURVEY CONDUCTED OR PAID FOR BY THE ELECTRICITY
40 REDISTRIBUTOR OF THE AREA LEASED OR OCCUPIED BY SUCH TENANT, WHICH AREA
41 SHALL BE MEASURED BY A REASONABLE STANDARD CONSISTENTLY APPLIED TO ALL
42 TENANTS IN THE ENTIRE BUILDING. SUCH SHARE SHALL BE A PROPORTION OF THE
43 TOTAL AREA IN THE ENTIRE BUILDING, WHICH TOTAL AREA SHALL INCLUDE
44 PUBLIC, COMMON AND SERVICE AREAS OF SUCH BUILDING BUT SHALL NOT INCLUDE
45 TENANT PREMISES WHICH ARE NOT LEASED OR OCCUPIED. NOTHING HEREIN SHALL
46 PREVENT AN ELECTRICITY REDISTRIBUTOR FROM CHARGING AS A PORTION OF RENT
47 AS DESCRIBED IN THIS SUBDIVISION ANY AMOUNT FOR ELECTRICITY USED IN
48 PUBLIC, COMMON OR SERVICE AREAS OR IN TENANT PREMISES THAT ARE NOT
49 LEASED OR OCCUPIED. UPON SIXTY DAYS' PRIOR WRITTEN NOTICE, SUCH TENANT,
50 AT ITS EXPENSE AND OPTION, SHALL BE ENTITLED TO A CHANGE FROM PRORATING
51 ELECTRICITY CHARGES IN ACCORDANCE WITH THIS ITEM TO DETERMINING SUCH
52 CHARGES IN ACCORDANCE WITH A SURVEY AS DESCRIBED IN CLAUSE (A) OF THIS
53 SUBPARAGRAPH.

54 (II) WHERE AN ELECTRICITY REDISTRIBUTOR USES A SURVEY AS DESCRIBED IN
55 CLAUSE (A) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, EITHER SUCH ELECTRIC-
56 ITY REDISTRIBUTOR OR ANY NON-RESIDENTIAL TENANT MAY, UPON FORTY-FIVE

1 DAYS' PRIOR WRITTEN NOTICE, ELECT FOR ADDITIONAL SURVEYS TO BE CONDUCTED
2 BY OR AT THE EXPENSE OF SUCH ELECTRICITY REDISTRIBUTOR BECAUSE OF
3 CHANGED CONDITIONS RESULTING FROM THE ADDITION OR REMOVAL OF EQUIPMENT,
4 MACHINERY, OR OTHER ELECTRICAL DEVICES, PROVIDED THAT SUCH ELECTION MAY
5 ONLY BE MADE WHERE IT IS REASONABLY BELIEVED THAT SUCH CHANGED CONDI-
6 TIONS COULD RESULT IN A CHANGE IN ELECTRICITY USAGE OF GREATER THAN FIVE
7 PERCENT IN COMPARISON WITH RESULTS OF THE PRIOR SURVEY. WHERE AN ELEC-
8 TRICITY REDISTRIBUTOR USES A SURVEY AS DESCRIBED IN CLAUSE (A) OR (B) OF
9 SUBPARAGRAPH (I) OF THIS PARAGRAPH, EITHER SUCH ELECTRICITY REDISTRIBU-
10 TOR OR ANY NON-RESIDENTIAL TENANT MAY, UPON FORTY-FIVE DAYS' PRIOR WRIT-
11 TEN NOTICE, NOT MORE THAN ONCE IN ANY CALENDAR YEAR, ELECT FOR AN ADDI-
12 TIONAL SURVEY TO BE CONDUCTED BECAUSE OF A DISAGREEMENT WITH THE PRIOR
13 SURVEY; PROVIDED, HOWEVER, THAT IN ANY YEAR IN WHICH SUCH TENANT CHANGES
14 FROM PRORATING ELECTRICITY CHARGES IN ACCORDANCE WITH CLAUSE (B) OF SUCH
15 SUBPARAGRAPH TO DETERMINING SUCH CHARGES IN ACCORDANCE WITH CLAUSE (A)
16 OF SUCH SUBPARAGRAPH, SUCH ELECTRICITY REDISTRIBUTOR AND SUCH TENANT
17 SHALL EACH BE ENTITLED TO ELECT AN ADDITIONAL SURVEY PURSUANT TO THIS
18 SENTENCE AFTER SUCH CHANGE REGARDLESS OF WHETHER AN ADDITIONAL SURVEY
19 PURSUANT TO THIS SENTENCE WAS CONDUCTED BEFORE SUCH CHANGE. THE PERSON
20 ELECTING AN ADDITIONAL SURVEY SHALL CONDUCT SUCH SURVEY OR PAY THE COSTS
21 THEREOF. IF AN ELECTRICITY REDISTRIBUTOR AND A TENANT DO NOT AGREE ON
22 THE RESULTS OF ANY ADDITIONAL SURVEY CONDUCTED BECAUSE OF DISAGREEMENT
23 WITH A PRIOR SURVEY, THEN, WITHIN FIFTEEN DAYS AFTER THE RECEIPT OF THE
24 RESULTS OF SUCH ADDITIONAL SURVEY, THE REPRESENTATIVES OF SUCH ELECTRIC-
25 ITY REDISTRIBUTOR AND SUCH TENANT SHALL CHOOSE AN INDEPENDENT REPRESENT-
26 TATIVE, WHOSE COST SHALL BE SHARED EQUALLY BY SAID PARTIES, TO MAKE A
27 BINDING DETERMINATION, PROVIDED THAT IF THE REPRESENTATIVES OF SUCH
28 ELECTRICITY REDISTRIBUTOR AND SUCH TENANT CANNOT AGREE UPON AN INDEPEND-
29 ENT REPRESENTATIVE WITHIN SUCH FIFTEEN DAY PERIOD, THEN AN INDEPENDENT
30 REPRESENTATIVE SHALL BE APPOINTED IN ACCORDANCE WITH A PROCEDURE ESTAB-
31 LISHED IN REGULATIONS PROMULGATED BY THE COMMISSION.

32 2. AN ELECTRICITY REDISTRIBUTOR SHALL CLEARLY STATE IN WRITING CHARGES
33 TO A NON-RESIDENTIAL TENANT FOR USAGE OF ELECTRICITY AS DESCRIBED IN
34 SUBDIVISION ONE OF THIS SECTION AND SHALL INCLUDE IN SUCH STATEMENT THE
35 CHARGE PER KILOWATT HOUR AND THE CHARGE PER KILOWATT, IF APPLICABLE, AND
36 ANY INFORMATION NECESSARY FOR COMPUTATION OF SUCH CHARGES. SUCH ELEC-
37 TRICITY REDISTRIBUTOR SHALL ISSUE AT LEAST ONE BILL OR STATEMENT FOR
38 SUCH USAGE EVERY SIXTY DAYS.

39 3. AN ELECTRICITY REDISTRIBUTOR SHALL PROVIDE TO EACH NON-RESIDENTIAL
40 TENANT A COPY OF THE APPLICABLE RATE SCHEDULE IN THE TARIFF OF THE UTIL-
41 ITY THAT IS PROVIDING ELECTRICITY SERVICE FOR RESALE OR REDISTRIBUTION
42 IN THE SERVICE AREA WHERE SUCH BUILDING IS LOCATED WITHIN THIRTY DAYS OF
43 COMMENCEMENT, RENEWAL, OR EXTENSION BY SUCH TENANT OF A LEASE OR OCCU-
44 PANCY. SUCH ELECTRICITY REDISTRIBUTOR SHALL ALSO PROVIDE TO SUCH TENANTS
45 A COPY OF SUCH RATE SCHEDULE AFTER ANY CHANGES THEREIN, IN ACCORDANCE
46 WITH REGULATIONS PROMULGATED BY THE COMMISSION.

47 S 643. DEPOSITS. AN ELECTRICITY REDISTRIBUTOR MAY REQUIRE ANY NON-RE-
48 SIDENTIAL TENANT TO WHOM SUCH ELECTRICITY REDISTRIBUTOR SHALL SUPPLY
49 ELECTRICITY SERVICES TO DEPOSIT A REASONABLE SUM OF MONEY ACCORDING TO
50 THE ESTIMATED QUANTITY OF SUCH SERVICES NECESSARY TO SUPPLY ELECTRICITY
51 FOR TWO CALENDAR MONTHS, AT RATES AND CHARGES ESTIMATED IN ACCORDANCE
52 WITH THE PROVISIONS OF THIS ARTICLE, TO SECURE PAYMENT FOR SUCH SERVICES
53 ACTUALLY RENDERED, AND SHALL ALLOW TO EVERY DEPOSITOR INTEREST AT A RATE
54 PER ANNUM EQUAL TO THAT PAID BY UTILITIES TO THEIR CUSTOMERS AS
55 PRESCRIBED FROM TIME TO TIME BY THE COMMISSION, PAYABLE UPON THE RETURN
56 OF THE DEPOSIT OR AT EARLIER INTERVALS AS HEREINAFTER PRESCRIBED. WHEN-

1 EVER SUCH DEPOSIT HAS BEEN HELD FOR A PERIOD OF ONE YEAR, THE INTEREST
2 ACCRUED ON SUCH DEPOSIT SHALL BE CREDITED TO THE DEPOSITOR ON THE FIRST
3 BILLING FOR ELECTRICITY SERVICE RENDERED AFTER THE NEXT SUCCEEDING FIRST
4 DAY OF OCTOBER. IF THE DEPOSITOR WAS NOT DELINQUENT IN THE PAYMENT OF
5 ANY BILL IN SUCH ONE YEAR PERIOD, THE DEPOSIT SHALL BE REFUNDED PROMPTLY
6 AT THE END THEREOF, BUT WITHOUT PREJUDICE TO THE RIGHT TO REQUIRE A
7 DEPOSIT THEREAFTER IN THE EVENT OF A DELINQUENCY OR WHERE IT CAN BE
8 SHOWN THAT THE FINANCIAL CONDITION OF A NON-RESIDENTIAL TENANT IS SUCH
9 THAT IT IS LIKELY THAT THE TENANT MAY DEFAULT IN THE FUTURE, AND TO
10 RETAIN SUCH DEPOSIT FOR A PRUDENT PERIOD; EXCEPT THAT SUBJECT TO SUCH
11 REGULATIONS AS THE COMMISSION MAY ESTABLISH, THE DEPOSIT MAY BE RETAINED
12 FOR A PRUDENT PERIOD BEYOND SUCH A ONE YEAR PERIOD.

13 S 644. ACCESS TO AND RETENTION OF RECORDS. 1. NOT MORE THAN ONCE IN
14 ANY CALENDAR YEAR AND UPON TWENTY DAYS' WRITTEN NOTICE, A NON-RESIDEN-
15 TIAL TENANT MAY INSPECT AN ELECTRICITY REDISTRIBUTOR'S RECORDS WITH
16 RESPECT TO THE ELECTRICITY CHARGES FOR THE PRECEDING THREE YEARS BY ANY
17 UTILITY, OR OTHER PERSON, CORPORATION OR ENTITY TO SUCH ELECTRICITY
18 REDISTRIBUTOR THAT INCLUDE THE RATES OR CHARGES FOR THE PREMISES OCCU-
19 PIED BY SUCH TENANT OR THAT ARE NECESSARY FOR DETERMINATION OF THE RATE
20 OR CHARGE PERMISSIBLE UNDER SECTION SIX HUNDRED FORTY-TWO OF THIS ARTI-
21 CLE. THE PROVISIONS OF THIS ARTICLE SHALL NOT ENTITLE SUCH TENANT TO
22 INSPECT ANY SUCH RECORDS FOR ANY MONTH PRIOR TO THE EFFECTIVE DATE OF
23 THIS ARTICLE OR ANY MONTH FOR WHICH SUCH TENANT MADE PAYMENTS FOR ELEC-
24 TRICITY USAGE OR CONSUMPTION PURSUANT TO THE PROVISIONS OF A LEASE OR
25 AGREEMENT NOT SUBJECT TO THE PROVISIONS OF THIS ARTICLE.

26 2. AN ELECTRICITY REDISTRIBUTOR SHALL RETAIN ANY AND ALL ACCOUNTS,
27 BOOKS, CONTRACTS, DOCUMENTS AND PAPERS RELATING TO ANY PURCHASE OF ELEC-
28 TRICITY BY SUCH ELECTRICITY REDISTRIBUTOR AND REDISTRIBUTION OF SUCH
29 ELECTRICITY TO NON-RESIDENTIAL TENANTS IN A BUILDING WHERE SUCH ELEC-
30 TRICITY IS REDISTRIBUTED TO ONE OR MORE NON-RESIDENTIAL TENANTS IN SUCH
31 BUILDING PURSUANT TO A LEASE OR AGREEMENT THAT IS SUBJECT TO THE
32 PROVISIONS OF THIS ARTICLE, FOR A PERIOD OF THREE YEARS.

33 S 645. NOTICE TO TENANT. AN ELECTRICITY REDISTRIBUTOR SHALL INCLUDE IN
34 ANY LEASE OR OTHER AGREEMENT FOR THE USE AND OCCUPANCY BY A NON-RESIDEN-
35 TIAL TENANT OF PREMISES IN A BUILDING OWNED OR LEASED BY SUCH ELECTRIC-
36 ITY REDISTRIBUTOR WRITTEN NOTICE INFORMING SUCH TENANT OF THE PROVISIONS
37 OF THIS ARTICLE. SUCH NOTICE SHALL INCLUDE THE FOLLOWING STATEMENT:
38 "THE MAXIMUM AMOUNT THAT YOU MAY BE CHARGED FOR ELECTRICITY USED IN YOUR
39 PREMISES IS REGULATED BY ARTICLE THIRTY-B OF THE GENERAL BUSINESS LAW
40 AND REGULATIONS PROMULGATED THEREUNDER." SUCH NOTICE SHALL ALSO INFORM
41 SUCH NON-RESIDENTIAL TENANT THAT AN ARBITRATOR OR ARBITRATION FIRM SHALL
42 BE USED FOR RESOLUTION OF DISPUTES OR COMPLAINTS PURSUANT TO SECTION SIX
43 HUNDRED FORTY-SIX OF THIS ARTICLE. THE COMMISSION MAY ALSO BY REGULATION
44 PRESCRIBE ADDITIONAL NOTICE REQUIREMENTS PURSUANT TO THIS SECTION.

45 S 646. ARBITRATION. 1. NON-RESIDENTIAL TENANTS AND ELECTRICITY REDIS-
46 TRIBUTORS SHALL SUBMIT DISPUTES OR COMPLAINTS ARISING UNDER THIS ARTICLE
47 TO AN ARBITRATOR OR ARBITRATION FIRM, UPON PAYMENT OF A PRESCRIBED
48 FILING FEE, IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE COMMIS-
49 SION. SUCH ARBITRATOR OR ARBITRATION FIRM SHALL BE APPOINTED IN ACCORD-
50 ANCE WITH SUCH REGULATIONS. WHERE THE AMOUNT OF THE ARBITRATOR'S OR
51 ARBITRATION FIRM'S AWARD IS TEN THOUSAND DOLLARS OR GREATER, EXCLUSIVE
52 OF INTEREST AND FEES, THE PARTY REQUIRED TO PAY SUCH AWARD MAY INSTITUTE
53 A COURT ACTION TO ADJUDICATE THE DISPUTE OR COMPLAINT DE NOVO. ARTICLE
54 SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES SHALL APPLY TO ANY
55 ARBITRATION TO THIS SECTION, EXCEPT WHERE SUCH ARTICLE IS INCONSISTENT
56 WITH THIS ARTICLE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT

1 ANY CONTRACTUAL, STATUTORY OR CONSTITUTIONAL RIGHTS OR REMEDIES PROVIDED
2 TO ANY PERSON BY LAW, OTHER THAN THE RIGHTS AND REMEDIES DESCRIBED BY
3 THIS ARTICLE.

4 2. THE ARBITRATOR SHALL HAVE THE AUTHORITY TO RESOLVE DISPUTES ARISING
5 UNDER THIS ARTICLE BY AWARDING APPROPRIATE RELIEF, WHICH MAY INCLUDE
6 ORDERING A REFUND OF ANY AMOUNT PAID BY A NON-RESIDENTIAL TENANT IN
7 EXCESS OF THE CHARGES AUTHORIZED BY THIS ARTICLE, ORDERING THAT FUTURE
8 CHARGES FOR ELECTRICITY BE IN ACCORDANCE WITH THE PROVISIONS OF THIS
9 ARTICLE, AND ORDERING THAT THE ARBITRATOR'S EXPENSES AND FEES, TOGETHER
10 WITH OTHER EXPENSES, INCLUDING ATTORNEY'S FEES, INCURRED IN THE CONDUCT
11 OF THE ARBITRATION, SHALL BE PAID AS PROVIDED IN THE AWARD.

12 S 647. DISCONTINUANCE OF IDENTIFICATION OF ELECTRICITY CHARGES. 1.
13 WHERE ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AN ELECTRICITY
14 REDISTRIBUTOR IDENTIFIES TO NON-RESIDENTIAL TENANTS IN PREMISES OF A
15 BUILDING CHARGES FOR ELECTRICITY THAT IS PURCHASED BY SUCH ELECTRICITY
16 REDISTRIBUTOR FROM A UTILITY OR ANY OTHER PERSON, CORPORATION OR ENTITY,
17 SUCH ELECTRICITY REDISTRIBUTOR MAY NOT, WHETHER UNILATERALLY OR PURSUANT
18 TO A LEASE OR OTHER AGREEMENT, AT ANY TIME AFTER SUCH EFFECTIVE DATE IN
19 WHICH SUCH ELECTRICITY REDISTRIBUTOR ENGAGES IN REDISTRIBUTION OF ELEC-
20 TRICITY IN SUCH BUILDING, FAIL TO IDENTIFY SUCH CHARGES FOR SUCH PREM-
21 ISES DURING ANY PERIOD OF TIME IN WHICH SUCH PREMISES ARE OCCUPIED BY
22 NON-RESIDENTIAL TENANTS; PROVIDED THAT A LANDLORD OR TENANT OF A BUILD-
23 ING OR AGENT THEREOF WHO IS AN ELECTRICITY REDISTRIBUTOR AS DEFINED IN
24 SECTION SIX HUNDRED FORTY-ONE OF THIS ARTICLE MAY, NOTWITHSTANDING ANY
25 OTHER PROVISION OF THIS ARTICLE, ENTER INTO A LEASE OR AGREEMENT WITH A
26 NON-RESIDENTIAL TENANT PURSUANT TO WHICH SUCH IDENTIFICATION OF CHARGES
27 IS NOT REQUIRED IF SO AUTHORIZED BY THE MAYOR OF A CITY HAVING A POPU-
28 LATION OF ONE MILLION OR MORE, OR BY THE GOVERNING BODY OF A COUNTY NOT
29 WHOLLY INCLUDED WITHIN SUCH CITY, IN WHICH SUCH BUILDING IS LOCATED.
30 SUCH AUTHORIZATION MAY BE ISSUED UPON A SHOWING THAT SUCH IDENTIFICATION
31 IS NO LONGER EITHER PHYSICALLY OR FINANCIALLY PRACTICAL.

32 2. WHERE ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AN ELECTRICITY
33 REDISTRIBUTOR HAS IDENTIFIED TO NON-RESIDENTIAL TENANTS IN A BUILDING
34 CHARGES FOR ELECTRICITY, A NEW ELECTRICITY REDISTRIBUTOR WHO ACQUIRES OR
35 LEASES SUCH BUILDING SHALL BE SUBJECT TO SUBDIVISION ONE OF THIS SECTION
36 AS IF SUCH NEW ELECTRICITY REDISTRIBUTOR WERE THE PRIOR ELECTRICITY
37 REDISTRIBUTOR FOR SUCH BUILDING.

38 S 648. LOCAL CONDITIONS ON BENEFITS. NOTHING IN THIS ARTICLE SHALL BE
39 CONSTRUED TO PREVENT A CITY HAVING A POPULATION OF ONE MILLION OR MORE
40 FROM IMPOSING CONDITIONS UPON RECEIPT OF ANY BENEFITS PROVIDED TO ELEC-
41 TRICITY REDISTRIBUTORS, INCLUDING REDUCTIONS IN TAX LIABILITY, PROVIDED
42 THAT SUCH CONDITIONS SHALL NOT BE LESS RESTRICTIVE UPON ELECTRICITY
43 REDISTRIBUTORS THAN THE TERMS OF THIS ARTICLE.

44 S 649. VIOLATIONS AND PENALTIES. 1. ANY PERSON VIOLATING ANY PROVISION
45 OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED EITHER
46 ONE THOUSAND DOLLARS, OR UP TO TWO TIMES ANY OVERCHARGE ASSESSED OR PAID
47 AS A RESULT OF SUCH VIOLATION FOR THE FIRST VIOLATION COMMITTED IN ANY
48 FIVE-YEAR PERIOD, AND NOT TO EXCEED EITHER FIVE THOUSAND DOLLARS OR UP
49 TO THREE TIMES THE AMOUNT OF SUCH OVERCHARGE FOR EACH SUBSEQUENT
50 VIOLATION COMMITTED WITHIN SUCH PERIOD. FOR PURPOSES OF THIS SECTION,
51 ALL OVERCHARGES TO A TENANT IN A SIXTY-DAY PERIOD SHALL CONSTITUTE A
52 SINGLE VIOLATION.

53 2. THE ATTORNEY GENERAL OR ANY CITY, TOWN, VILLAGE OR COUNTY, OTHER
54 THAN A COUNTY WHOLLY INCLUDED WITHIN A CITY, IN THE NAME OF ITS CITI-
55 ZENS, MAY BRING AN ACTION TO RECOVER THE CIVIL PENALTIES SET FORTH IN
56 SUBDIVISION ONE OF THIS SECTION, TO RESTRAIN FURTHER VIOLATIONS OF THIS

ARTICLE AND TO OBTAIN SUCH OTHER RELIEF AS A COURT WITH PROPER JURISDICTION MAY DEEM APPROPRIATE. IN ANY SUCH ACTION BROUGHT BY THE ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL BE AUTHORIZED TO RECOVER THE COSTS OF SUCH ACTION, WHICH SHALL BE PAID, ALONG WITH ANY CIVIL PENALTIES AWARDED, INTO THE STATE TREASURY TO THE CREDIT OF THE GENERAL FUND. IN ANY SUCH ACTION BROUGHT BY A CITY, TOWN, VILLAGE OR COUNTY, THE CITY, TOWN, VILLAGE OR COUNTY SHALL BE AUTHORIZED TO RECOVER THE COSTS OF SUCH ACTION; WHICH SHALL BE PAID, ALONG WITH ANY CIVIL PENALTIES AWARDED, TO ITS GENERAL FUND.

3. THE ATTORNEY GENERAL OR THE CHIEF LEGAL OFFICER OF A CITY, TOWN, VILLAGE OR COUNTY AUTHORIZED TO BRING AN ACTION UNDER THIS SECTION, SHALL HAVE THE POWER TO INSPECT ANY WRITTEN MATERIALS RETAINED BY AN ELECTRICITY REDISTRIBUTOR PURSUANT TO SUBDIVISION TWO OF SECTION SIX HUNDRED FORTY-FOUR OF THIS ARTICLE, AND SUCH ELECTRICITY REDISTRIBUTOR SHALL PROVIDE ACCESS THERETO, FOR THE PURPOSE OF ENSURING COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE.

4. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO PREVENT THE CORPORATION COUNSEL OF ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE FROM MAINTAINING AN ACTION TO RECOVER AN AMOUNT EQUAL TO ANY BENEFITS PROVIDED UNDER THE PROVISIONS OF ANY LOCAL LAW OR LAWS ADOPTED PURSUANT TO ARTICLE TWO-G OF THE GENERAL CITY LAW WHICH ARE IMPROPERLY OBTAINED.

S 649-A. RULES AND REGULATIONS. THE COMMISSION SHALL ADOPT SUCH RULES AND REGULATIONS AS IT DEEMS NECESSARY AND PROPER FOR IMPLEMENTATION OF THIS ARTICLE.

S 3. The public service law is amended by adding a new section 5-a to read as follows:

S 5-A. ELECTRICITY REDISTRIBUTORS. THE COMMISSION SHALL ADOPT SUCH RULES AND REGULATIONS AS IT DEEMS NECESSARY AND PROPER FOR IMPLEMENTATION OF ARTICLE THIRTY-B OF THE GENERAL BUSINESS LAW. SUCH RULES AND REGULATIONS SHALL BE ENFORCEABLE AS PROVIDED IN SUCH ARTICLE.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law but shall not be applicable to leases and other agreements that represent occupancies commencing before such effective date, provided that this act shall apply to any renewals or extensions of such leases and agreements; provided further, however, that sections 647 and 649 of article 30-B of the general business law, as added by section two of this act, shall take effect immediately and apply to all occupancies commencing or continuing as of the date of enactment of this act, and provided further that the public service commission of the state of New York shall promulgate within 180 days of the date of enactment of this act into law, rules or regulations necessary for the implementation of the provisions of article 30-B of the general business law, as added by section two of this act, and on or after such date of enactment the public service commission may take any other actions necessary for the timely implementation of this act.