

9389

I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to requiring notification to utility customers of their right to direct access to public service commission complaint procedures without arbitration or court proceedings, to restricting the conversion of residential rental buildings from being mass-metered to submetered and to prohibiting the collection of charges for residential utility service deemed to be rent; to amend the multiple dwelling law and the multiple residence law, in relation to prohibiting the collection of charges for heat-related residential utility service; and to require the public service commission to audit previously approved utility submetering orders, compare usage before submetering to usage after submetering orders were implemented, and prepare a report concerning its findings

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

1 Section 1. Legislative findings and intent. The legislature finds that
2 some providers of residential utility service have created barriers to
3 prompt resolution of customer complaints through the complaint adjudication
4 functions of the public service commission. Some providers of
5 electric service refer customers to private arbitration or judicial
6 adjudication of utility customer complaints, contrary to the primary
7 jurisdiction of the public service commission, creating barriers to the
8 efficient and uniform enforcement and administration of the Home Energy
9 Fair Practices Act. The legislature further finds that it is in the
10 public interest to require the public service commission to notify all
11 residential utility customers of their right to file complaints directly
12 with the public service commission for administrative determination
13 without pursuing third party arbitration or judicial relief.
14 The legislature further finds that deeming by owners of charges to
15 residential tenants for electric service to be rent and the assessment
16 and collection by multiple dwelling owners of separate charges for electricity,
17 electric service, natural gas, and natural gas service or other

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

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1 fuel used to heat living quarters is not in the public interest and
2 should be prohibited.

3 S 2. Subdivision 1 of section 43 of the public service law, as added
4 by chapter 713 of the laws of 1981, is amended to read as follows:

5 1. The commission shall maintain regulations for the handling of resi-
6 dential customer complaints, which at a minimum shall require that each
7 utility or municipality: (a) maintain procedures for prompt investi-
8 gation of any complaint on a bill for gas or electric service rendered
9 or a deposit required and for prompt reporting to the complainant of the
10 result of such investigation. If such report is made orally, the utili-
11 ty corporation or municipality shall offer the complainant upon a writ-
12 ten request the opportunity to receive the report in writing; (b) inform
13 any complainant whose complaint is resolved in favor of the utility
14 corporation or municipality, in whole or in part, of the availability of
15 the commission's complaint handling procedures; (c) refrain from termi-
16 nating service for nonpayment so long as a complaint is pending before a
17 utility, municipality or the commission and for fifteen days thereafter,
18 or for such period as the commission for good cause shall establish;
19 provided however, that as a condition of continued service during the
20 pendency of any such dispute, a customer shall pay the undisputed
21 portions of any bill for service including bills for current usage, or
22 such amounts as the commission determines reasonably reflect the cost of
23 usage to such customer; [and] (d) refrain from treating the disputed
24 portion of any bill as late during the pendency of any complaint before
25 the utility or municipality; AND (E) NOTIFY ALL RESIDENTIAL CUSTOMERS
26 ANNUALLY, INCLUDING SUBMETERED CUSTOMERS, THAT THE COMPLAINT HANDLING
27 PROCEDURES OF THE PUBLIC SERVICE COMMISSION CAN BE INVOKED TO OBTAIN AN
28 ADMINISTRATIVE DETERMINATION OF COMPLAINTS REGARDING UTILITY SERVICE BY
29 TELEPHONE CALL, LETTER, ONLINE COMPLAINT FORM, OR VISIT TO AN OFFICE OF
30 THE PUBLIC SERVICE COMMISSION.

31 S 3. Section 53 of the public service law is renumbered section 54 and
32 a new section 53 is added to read as follows:

33 S 53. RESIDENTIAL RENTAL BUILDING SUBMETERING. 1. A MASTER-METERED
34 RESIDENTIAL RENTAL BUILDING MAY BE CONVERTED TO BE SUBMETERED IF THE
35 OWNER OF THE BUILDING FILES AN APPLICATION TO CONVERT THE BUILDING TO
36 SUBMETERING WITH THE COMMISSION, PROVIDED THAT:

37 (A) THE APPLICANT APPLYING TO PROVIDE SUBMETERED ELECTRIC SERVICE
38 INCLUDES WITH THE APPLICATION A PROCEDURE FOR NOTIFYING IN WRITING,
39 WITHIN THIRTY DAYS OF FILING THE APPLICATION WITH THE COMMISSION, ALL
40 TENANTS OF RECORD OF THE PROPOSAL TO SUBMETER. THE NOTIFICATION SHALL:

41 (I) INCLUDE A SUMMARY OF THE INFORMATION PROVIDED TO THE COMMISSION;

42 (II) INFORM TENANTS THAT A PUBLIC COMMENT PERIOD HAS COMMENCED;

43 (III) STATE THE DATE AFTER WHICH COMMENTS DIRECTED TO THE COMMISSION
44 WILL NO LONGER BE ACCEPTED;

45 (IV) PROMINENTLY DISPLAY THE ADDRESS AND TELEPHONE NUMBER OF THE NEAR-
46 EST PUBLIC SERVICE COMMISSION OFFICE;

47 (V) STATE THE DATE, TIME, AND LOCATION OF THE PUBLIC HEARING SET BY
48 THE COMMISSION TO HEAR TESTIMONY FROM THE PUBLIC;

49 (VI) DIRECT THE TENANT WHERE ON THE PUBLIC SERVICE COMMISSION'S
50 WEBSITE THE ENTIRE APPLICATION CAN BE VIEWED, AS WELL AS TO PROVIDE A
51 TOLL-FREE TELEPHONE NUMBER AND ADDRESS FROM WHICH A TENANT OF RECORD MAY
52 REQUEST A COPY OF THE COMPLETE APPLICATION TO BE MAILED TO SUCH TENANT
53 AT NO COST TO THE TENANT;

54 (VII) INCLUDE A STATEMENT SUBSTANTIATING ANY ECONOMIC ADVANTAGES OF
55 SUBMETERING OVER DIRECT UTILITY METERING AT THE PREMISES PROPOSED TO BE
56 SUBMETERED;

1 (VIII) INCLUDE A DESCRIPTION OF THE TYPE OF SUBMETERING SYSTEM TO BE
2 INSTALLED AND A VALIDATION OF ITS RELIABILITY AND ACCURACY;
3 (IX) STATE THE METHOD AND BASIS FOR CALCULATING RATES TO TENANTS,
4 WHICH SHALL INCLUDE A MAXIMUM RATE PROVISION PREVENTING CHARGES TO
5 TENANTS FROM EXCEEDING THE TARIFFED RATES AND CHARGES FOR SERVICE FROM
6 THE LOCAL DISTRIBUTION UTILITY;
7 (X) STATE COMPLAINT PROCEDURES AND TENANT PROTECTIONS CONSISTENT WITH
8 THE HOME ENERGY FAIR PRACTICES ACT; AND
9 (XI) DEMONSTRATE THAT SATISFACTORY ARRANGEMENTS HAVE BEEN MADE WITH
10 THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO PROVIDE CONTINUED ELECTRIC
11 SERVICE UPON ACCEPTANCE OF VENDOR PAYMENT OF UTILITY ASSISTANCE GRANTS
12 IN ACCORDANCE WITH THE STATE PLAN FOR REGULAR AND EMERGENCY HOME ENERGY
13 ASSISTANCE UNDER SECTION NINETY-SEVEN OF THE SOCIAL SERVICES LAW, THE
14 EMERGENCY UTILITY ASSISTANCE PROGRAM UNDER SECTION ONE HUNDRED
15 THIRTY-ONE-S OF THE SOCIAL SERVICES LAW, AND IN ACCORDANCE WITH OTHER
16 PROVISIONS OF THE SOCIAL SERVICES LAW OR REGULATIONS OF THE OFFICE OF
17 TEMPORARY AND DISABILITY ASSISTANCE RELATING TO UTILITY ASSISTANCE
18 PAYMENTS.
19 (B) THE COMMISSION HOLDS A PUBLIC HEARING AT A LOCATION NEAR THE RESI-
20 DENTIAL RENTAL BUILDING AT LEAST THIRTY DAYS PRIOR TO THE CONDITIONAL
21 AND FINAL APPROVAL OR DENIAL OF THE SUBMETERING APPLICATION.
22 (C) THE APPLICANT INCLUDES WITH THE APPLICATION:
23 (I) FINDINGS OF A STUDY COMMISSIONED BY THE APPLICANT OF THE THERMAL
24 CHARACTERISTICS OF THE BUILDING;
25 (II) RECORDS OF THE LAST TWENTY-FOUR MONTHS OF ELECTRICAL USAGE AND
26 CHARGES;
27 (III) THE PROJECTED SUBMETERED RATES AT THE CURRENT USAGE RATE FOR THE
28 VARIOUS DWELLING UNIT TYPES THAT EXIST IN THE BUILDING;
29 (IV) A PLAN TO REPLACE ALL NON-ENERGY STAR RATED APPLIANCES PROVIDED
30 BY THE APPLICANT TO THE TENANTS WITH ENERGY STAR RATED APPLIANCES.
31 (D) THE APPLICANT PAYS ALL COSTS OF AN INDEPENDENT ENERGY ANALYSIS OF
32 THE BUILDING BY ONE OF THE CONSULTANTS CHOSEN BY THE TENANTS IF A GROUP
33 OF AT LEAST FIFTY PERCENT OF THE TENANTS OF RECORD REQUEST SUCH ANALYSIS
34 AND THE GROUP OF TENANTS PROVIDES TO THE APPLICANT AT LEAST THREE BIDS
35 FROM CONSULTANTS WHO CAN PERFORM SUCH ANALYSIS.
36 2. (A) ALL APPLICATIONS FILED PURSUANT TO THE PROVISIONS OF THIS
37 SECTION SHALL BE SUBJECT TO A TWO-TIERED APPROVAL PROCESS BY THE COMMISS-
38 SION. INITIAL APPROVAL OF AN APPLICATION, IF GRANTED BY THE COMMISSION,
39 SHALL BE GRANTED FOR A PERIOD OF ONE YEAR, AT WHICH TIME, THE APPROVAL
40 SHALL AUTOMATICALLY EXPIRE; PROVIDED THAT, WITHIN THREE MONTHS PRIOR OR
41 SUBSEQUENT TO THE EXPIRATION OF THE GRANT OF CONDITIONAL APPROVAL, THE
42 APPLICANT MAY FILE FOR REVIEW OF THE APPLICATION FOR THE PURPOSE OF
43 OBTAINING FINAL APPROVAL OF THE APPLICATION. ANY APPLICANT FILING FOR
44 REVIEW FOR FINAL APPROVAL OF AN APPLICATION SHALL SUBMIT TO THE COMMISS-
45 SION A LISTING OF THE ACTUAL METERED USAGE RATES AND CHARGES TO THE
46 TENANTS DURING THE PERIOD OF THE CONDITIONAL APPROVAL OF THE APPLICA-
47 TION.
48 (B) ANY APPLICANT WHOSE APPLICATION FOR CONDITIONAL APPROVAL IS DENIED
49 BY THE COMMISSION MAY RE-FILE AN APPLICATION NO EARLIER THAN SIX MONTHS
50 FOLLOWING THE DENIAL OF THE APPLICATION BY THE COMMISSION.
51 (C) THE COMMISSION SHALL PROVIDE WRITTEN NOTICE TO AN APPLICANT OF ITS
52 DECISION REGARDING APPLICATIONS WITHIN THIRTY DAYS OF THE PUBLIC HEARING
53 REQUIRED BY SUBDIVISION ONE OF THIS SECTION. ALL DENIALS OF APPLICATIONS
54 SHALL STATE THE REASONS FOR THE DENIAL, SHALL SPECIFY THE MEASURES THE
55 APPLICANT MUST TAKE TO QUALIFY FOR APPROVAL OF THE APPLICATION AND SHALL
56 ADVISE THE APPLICANT OF HIS OR HER RIGHT TO INVESTIGATION AND REVIEW OF

1 THE DENIAL OF THE APPLICATION IF THE APPLICANT CONSIDERS SUCH DENIAL TO
2 BE WITHOUT JUSTIFICATION.

3 S 4. Section 75 of the public service law is amended to read as
4 follows:

5 S 75. Defense in case of excessive charges for gas or electricity OR
6 CHARGES FOR RESIDENTIAL UTILITY SERVICE DEEMED TO BE RENT. If it be
7 alleged and established in an action OR PROCEEDING brought in any court
8 for the collection of any charge for gas or electricity OR FOR
9 POSSESSION OF REAL PROPERTY BY REASON OF UNPAID CHARGES CLAIMED BY THE
10 OWNER OR HIS AGENT FOR UTILITY SERVICE, that a price has been demanded
11 in excess of that fixed by the commission or by statute in the munici-
12 pality wherein the action arose, OR THAT CHARGES FOR UTILITY SERVICE TO
13 ANY RESIDENTIAL TENANT ARE DEEMED TO BE RENT UNDER THE TERMS OF ANY
14 ARRANGEMENT OR AGREEMENT RELATING TO RENTAL OF RESIDENTIAL PROPERTY, no
15 recovery shall be had therein, but the fact that such excessive charges
16 have been made OR THAT CHARGES FOR UTILITY SERVICE FOR RESIDENTIAL USE
17 ARE DEEMED TO BE RENT shall be a complete defense to such action.

18 S 5. Subdivision 1 of section 79 of the multiple dwelling law, as
19 amended by chapter 225 of the laws of 1982, is amended to read as
20 follows:

21 1. Every multiple dwelling exceeding two stories in height and erected
22 after April eighteenth, nineteen hundred twenty-nine, and every garden-
23 type maisonette dwelling project erected after April eighteenth, nine-
24 teen hundred fifty-four, shall be provided with heat. On and after
25 November first, nineteen hundred fifty-nine, every multiple dwelling
26 shall be provided with heat or the equipment or facilities therefor.
27 During the months between October first and May thirty-first, such heat
28 and the equipment or facilities shall be sufficient to maintain the
29 minimum temperatures required by local law, ordinance, rule or regu-
30 lation, in all portions of the dwelling used or occupied for living
31 purposes provided, however, that such minimum temperatures shall be as
32 follows: (a) sixty-eight degrees Fahrenheit during the hours between
33 six o'clock in the morning and ten o'clock in the evening, whenever the
34 outdoor temperature falls below fifty-five degrees Fahrenheit, notwith-
35 standing the provisions of paragraph a of subdivision four of section
36 three of this chapter, and (b) at least fifty-five degrees Fahrenheit
37 during the hours between ten o'clock in the evening and six o'clock in
38 the morning, whenever the outdoor temperature falls below forty degrees
39 Fahrenheit. Nothing in this section shall be deemed to relieve any owner
40 of the duty of providing centrally supplied or other approved source of
41 heat prior to November first, nineteen hundred fifty-nine in any case
42 where such heat is required by this chapter or any other law, ordinance,
43 rule or regulation to be supplied in a dwelling prior to said date. The
44 heating system in dwellings used for single room occupancy shall be in
45 conformity with the requirements of section two hundred forty-eight OF
46 THIS CHAPTER. NO OWNER OR AGENT OF ANY OWNER SHALL SEPARATELY CHARGE
47 TENANTS OR OCCUPANTS FOR ANY ELECTRICITY, ELECTRIC SERVICE, NATURAL GAS
48 OR NATURAL GAS SERVICE OR OTHER FUEL UTILIZED TO HEAT LIVING QUARTERS.

49 S 6. Section 173 of the multiple residence law, as amended by chapter
50 225 of the laws of 1982, is amended to read as follows:

51 S 173. Heating. Every new dwelling shall be provided with heat in all
52 living rooms sufficient to maintain the minimum temperatures required by
53 local law, ordinances, rules or regulation, or by the local public
54 health officer, provided, however, that such minimum temperature shall,
55 notwithstanding the provisions of subdivision one of section three
56 hundred twenty-nine of this chapter, be sixty-eight degrees Fahrenheit

1 during the hours between six o'clock in the morning and ten o'clock in
2 the evening during the months between October first and May thirty-
3 first, whenever the outdoor temperature falls below fifty-five degrees
4 Fahrenheit. NO OWNER OR AGENT OF ANY OWNER SHALL SEPARATELY CHARGE
5 TENANTS OR OCCUPANTS FOR ANY ELECTRICITY, ELECTRIC SERVICE, NATURAL GAS
6 OR NATURAL GAS SERVICE OR OTHER FUEL UTILIZED TO HEAT LIVING QUARTERS.
7 S 7. (a) The public service commission shall audit all utility subme-
8 tering orders approved by the public service commission during the peri-
9 od of January 1, 2004 through the effective date of this act, and shall
10 specifically determine whether all applicable utility price caps and
11 tenant protection provisions have been complied with and compare the
12 rate and cost of utility usage before submetering to usage after imple-
13 mentation of submetering orders. This audit shall be completed within
14 twelve months following the effective date of these provisions.
15 (b) Upon completion of the audit, the public service commission shall
16 make a report to the governor and the legislature of its findings,
17 conclusions and recommendations, and shall submit with such report such
18 legislative proposals as it deems necessary to implement its recommenda-
19 tions. This report shall be submitted no later than ninety days after
20 completion of the audit. No new submetering orders shall be approved
21 until the public service commission report is submitted to the governor
22 and the legislature.
23 S 8. The public service commission shall promulgate any rules and
24 regulations necessary for the implementation of this act on its effec-
25 tive date.
26 S 9. This act shall take effect immediately.