S T A T E O F N E W Y O R K

5286--A

Cal. No. 185

2013-2014 Regular Sessions

I N S E N A T E

May 15, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public service law and the real property law, in relation to establishing on-bill energy services company energy efficiency payment program

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

Section 1. The public service law is amended by adding a new section 66-n to read as follows:

S 66-N. ON-BILL ENERGY SERVICES COMPANY ENERGY EFFICIENCY PAYMENT PROGRAM. 1. (A) THE COMMISSION SHALL REQUIRE EACH COMBINED ELECTRIC AND GAS UTILITY TO PROVIDE A PROGRAM FOR THE BILLING AND THE REMITTANCE OF PAYMENTS RECEIVED FOR THE PAYMENT OF CONTRACTUALLY OBLIGATED PAYMENTS OF ITS PARTICIPATING CUSTOMERS FOR ENERGY EFFICIENCY PROGRAMS AS DEFINED HEREIN PROVIDED BY A NEW YORK ENERGY SERVICES COMPANY AND APPROVED BY THE COMMISSION. TO THE MAXIMUM EXTENT PRACTICABLE, COMBINED ELECTRIC AND GAS UTILITIES SHALL UTILIZE EXISTING BILLING PROCESSES ESTABLISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW.

(B) THIS PROGRAM SHALL BE AVAILABLE TO CUSTOMERS WHO HAVE A WRITTEN CONTRACT PROVIDING FOR ON-BILL PAYMENT FOR QUALIFIED ENERGY EFFICIENCY SERVICES PROVIDED HOWEVER, THAT SUCH CUSTOMERS MUST BE THE COMBINED ELECTRIC AND GAS UTILITIES' CUSTOMER OF RECORD TO WHICH SUCH ON-BILL PAYMENT CHARGES WILL APPLY.

(C) THE COMMISSION SHALL PROMULGATE REGULATIONS TO IMPLEMENT A PROGRAM PURSUANT TO THIS SECTION WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING: A REQUIREMENT FOR A CONTRACT BETWEEN THE PARTICIPATING ENERGY

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

LBD10998-04-4

SERVICES COMPANY AND CUSTOMER WHICH INCORPORATES A SPECIFIC AUTHORIZATION BY THE CUSTOMER OF THE ON-BILL PAYMENT MECHANISM, A HOLD HARMLESS PROVISION APPLICABLE TO THE COMBINED ELECTRIC AND GAS UTILITY FROM ANY LIABILITY ARISING FROM THE CONTRACT BETWEEN THE ENERGY SERVICES COMPANY AND CUSTOMER, ESTABLISHING PARTICIPATION REQUIREMENTS FOR ENERGY SERVICES COMPANIES, ESTABLISHING A METHOD FOR NOTIFICATION BY THE PARTICIPATING ENERGY SERVICES COMPANY TO THE COMBINED ELECTRIC AND GAS UTILITY AND THE COMMISSION OF THE CUSTOMER AGREEMENT TO PARTICIPATE IN THE PROGRAM AND THE BILLING AMOUNT FOR THE ON-BILL PAYMENT, A SCHEDULE FOR REMITTANCE OF FUNDS RECEIVED FROM ON-BILL PAYMENTS, AND SUCH OTHER REGULATIONS REQUIRED FOR IMPLEMENTATION.

(D) A COMBINED ELECTRIC AND GAS UTILITY SHALL NOT BE REQUIRED TO PROVIDE ON-BILL PAYMENT FOR SERVICES THAT ARE NOT QUALIFIED ENERGY EFFICIENCY SERVICES.

(E) ON-BILL PAYMENT CHARGES BILLED PURSUANT TO THIS SECTION SHALL BE EXCLUDED FROM ANY DETERMINATION OF A UTILITY COMPANY'S GROSS OPERATING REVENUES DERIVED FROM INTRASTATE UTILITY OPERATIONS FOR PURPOSES OF SECTION EIGHTEEN-A OF THIS CHAPTER.

(F) WHEN A COMPLAINT IS RECEIVED BY A COMBINED ELECTRIC AND GAS UTILITY COMPANY THAT IS RELATED TO WORK PERFORMANCE IN CONNECTION WITH QUALIFIED ENERGY EFFICIENCY SERVICES BY A PARTICIPATING ENERGY SERVICES COMPANY SUCH UTILITY COMPANY SHALL ONLY BE REQUIRED TO DIRECT THE CUSTOMER TO CONTACT THE ENERGY SERVICES COMPANY AND INFORM THE CUSTOMER TO CONTACT THE COMMISSION IF A RESOLUTION CANNOT BE REACHED WITH THE ENERGY SERVICES COMPANY. SUCH COMPLAINTS SHALL NOT BE DEEMED TO BE COMPLAINTS ABOUT THE UTILITY SERVICE OR ENERGY SERVICE COMPANY'S COMMODITY SERVICE IN ANY OTHER COMMISSION ACTION OR PROCEEDING.

(G) THE COMBINED ELECTRIC AND GAS UTILITY SHALL NOT BE LIABLE FOR ANY ACTIONS OR DAMAGES ARISING OUT OF THE CONDUCT, WHETHER NEGLIGENT OR INTENTIONAL, OF A PARTICIPATING ENERGY SERVICES COMPANY AND SUCH COMPANY SHALL INDEMNIFY AND HOLD HARMLESS THE UTILITY AGAINST LIABILITY FOR DAMAGE CONTRIBUTED TO, CAUSED BY, OR RESULTING FROM THE NEGLIGENCE OR OTHER CULPABLE CONDUCT OF THE PARTICIPATING ENERGY SERVICES COMPANY.

(H) A COMBINED ELECTRIC AND GAS UTILITY MAY PROVIDE MARKETING SERVICES TO A PARTICIPATING ENERGY SERVICES COMPANIES FOR COMPENSATION TO BE AGREED UPON BETWEEN THE PARTIES.

2. FOR PURPOSES OF CARRYING OUT THE REQUIREMENTS OF THIS SECTION, EACH COMBINED ELECTRIC AND GAS UTILITY SHALL SUBMIT AN IMPLEMENTATION PLAN TO THE COMMISSION WITHIN ONE HUNDRED TWENTY DAYS OF A REQUEST BY AN ENERGY SERVICES COMPANY APPROVED BY THE COMMISSION. SUCH PLAN SHALL INCLUDE AN EXPLANATION OF THE ESTIMATED COSTS FOR IMPLEMENTATION OF THE ON-BILL PAYMENT PROGRAM PROVIDED FOR IN THIS SECTION.

(A) THE PARTICIPATING ENERGY SERVICES COMPANY SHALL REIMBURSE THE COMBINED ELECTRIC AND GAS UTILITY THROUGH A DEDUCTION FROM ITS MONTHLY REMITTANCES OF THE REASONABLE AND NECESSARY COSTS OF THE IMPLEMENTATION AND MAINTENANCE OF THE ON-BILL ENERGY SERVICES COMPANY EFFICIENCY PAYMENT PROGRAM AS APPROVED BY THE COMMISSION ON AN ANNUAL BASIS. TO ENSURE PROPER PROGRAM DESIGN AND IMPLEMENTATION, A COMBINED ELECTRIC AND GAS UTILITY SHALL DURING THE INITIAL YEAR OF OPERATION LIMIT THE NUMBER OF PARTICIPATING CUSTOMERS TO NO MORE THAN THREE PERCENT OF ITS TOTAL CUSTOMERS ON A FIRST-COME, FIRST-SERVED BASIS. PRIOR TO REACHING SUCH LIMIT THE COMMISSION SHALL REVIEW THE AFORESAID LIMIT, AND THE COMMISSION SHALL INCREASE SUCH LIMIT PROVIDED THAT THE COMMISSION FINDS THE PROGRAM HAS NOT CAUSED SIGNIFICANT HARM TO THE COMBINED ELECTRIC AND GAS UTILITY OR ITS CUSTOMERS.

(B) THE COMMISSION MAY SUSPEND OR TERMINATE A UTILITY COMPANY'S OFFERING OF THE ON-BILL PAYMENT AFTER NOTICE AND HEARING PURSUANT TO THIS SECTION PROVIDED THAT THE COMMISSION MAKES A FINDING EITHER THAT THERE IS NOT SUFFICIENT USAGE TO JUSTIFY THE COST, OR A FINDING OF OTHER GOOD CAUSE.

(C) ONE HUNDRED PERCENT OF THE ENERGY EFFICIENT SAVINGS REALIZED FROM THE IMPLEMENTATION OF QUALIFIED ENERGY EFFICIENCY SERVICES IMPLEMENTED THROUGH ENERGY SERVICES COMPANY ENERGY EFFICIENCY PAYMENT PROGRAMS IN THE COMBINED ELECTRIC AND GAS UTILITY SERVICE TERRITORIES SHALL BE CREDITED TO THE APPROPRIATE UTILITY'S ENERGY SAVINGS TARGETS ESTABLISHED BY THE COMMISSION IN THE ENERGY EFFICIENCY PORTFOLIO STANDARD PROCEEDING.

3. SCHEDULES FOR BILLING AND REMITTANCE OF ON-BILL RECOVERY CHARGES SHALL PROVIDE:

(A) THAT BILLING AND REMITTANCE SERVICES SHALL BE AVAILABLE TO CUSTOMERS THAT HAVE MET ANY STANDARDS ESTABLISHED BY THE COMMISSION FOR PARTICIPATION IN THE ON-BILL RECOVERY PURSUANT TO THIS SECTION AND HAVE EXECUTED A CONTRACT AS REQUIRED HEREIN; PROVIDED HOWEVER, FOR RESIDENTIAL PROPERTIES ANY SUCH CUSTOMER MUST HOLD PRIMARY OWNERSHIP OR REPRESENT THE PRIMARY OWNER OR OWNERS OF THE PREMISES OR REPRESENT THE PRIMARY HOLDER OR HOLDERS OF METER ACCOUNT RESPONSIBILITY FOR ALL METERS TO WHICH SUCH ON-BILL RECOVERY CHARGES WILL APPLY.

(B) THE RESPONSIBILITIES OF THE COMBINED ELECTRIC AND GAS UTILITY SHALL BE LIMITED SOLELY TO PROVIDING BILLING, PAYMENT PROCESSING AND REMITTANCE SERVICES FOR ON-BILL PAYMENTS.

(C) UNLESS OTHERWISE PRECLUDED BY LAW OR THE COMMISSION, PARTICIPATION IN THIS PROGRAM SHALL NOT AFFECT THE CUSTOMERS' ELIGIBILITY FOR ANY REBATE OR OTHER INCENTIVE OFFERED BY A COMBINED ELECTRIC AND GAS UTILITY.

(D) ANY CHARGES IN ARREARS WHICH ARE DUE AND OWING, THE COLLECTION THEREOF SHALL BE THE SOLE RESPONSIBILITY OF THE PARTICIPATING ENERGY SERVICES COMPANY.

(E) A CUSTOMER REMITTING LESS THAN THE TOTAL AMOUNT DUE FOR ELECTRIC AND/OR GAS SERVICES AND ON-BILL RECOVERY CHARGES SHALL HAVE ANY SUCH PARTIAL PAYMENT FIRST APPLIED AS PAYMENT FOR ELECTRIC AND/OR GAS SERVICES AND THE REMAINDER THEREOF SHALL BE APPLIED TO THE ON-BILL RECOVERY CHARGE.

(F) BILLING AND REMITTANCE SERVICES SHALL BE AVAILABLE WITHOUT REGARD TO WHETHER THE ENERGY DELIVERED BY THE UTILITY IS THE CUSTOMER'S PRIMARY ENERGY SOURCE.

(G) THE COMMISSION SHALL NOT APPROVE ANY APPLICATION FOR THE CONVERSION TO SUBMETERING OF ANY MASTER METER THAT IS SUBJECT TO ANY ON-BILL PAYMENT CHARGES.

4. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS ARE DEFINED AS:

(A) "QUALIFIED ENERGY EFFICIENCY SERVICES" MEANS THE INSTALLATION OR UPGRADE OF SYSTEMS, EQUIPMENT, OR TECHNOLOGIES BASED ON RECOMMENDATIONS FROM A PARTICIPATING ENERGY SERVICES COMPANY OR AN ENERGY AUDIT THAT WILL INCREASE THE ENERGY EFFICIENCY AND CONSERVATION OF A STRUCTURE OR REDUCE THE COST OR CONSUMPTION OF ENERGY, INCLUDING BUT NOT LIMITED TO:

(I) INSTALLATION, REPLACEMENT, OR MODIFICATION OF HEATING OR COOLING SYSTEMS OR MAJOR COMPONENTS OF SUCH SYSTEMS;

(II) INSTALLATION, REPLACEMENT, OR MODIFICATION OF WATER HEATERS;

(III) INSTALLATION, REPLACEMENT, OR MODIFICATION OF THERMAL SOLAR HEAT OR HOT WATER SYSTEMS;

(IV) INSTALLATION, REPLACEMENT, OR MODIFICATION OF THERMOSTATS AND OTHER HEATING OR COOLING SYSTEM CONTROL AND COMMUNICATIONS TECHNOLOGIES;

(V) INSTALLATION, REPLACEMENT, OR MODIFICATION OF TECHNOLOGIES DESIGNED TO FACILITATE DEMAND RESPONSE OR MORE EFFICIENT USE OF ENERGY;

(VI) FUEL SWITCHING TO CONVERT AN ELECTRICALLY HEATED BUILDING TO A MORE EFFICIENT HEATING SOURCE PROVIDED THAT SIGNIFICANT ENERGY COST-SAVINGS CAN BE DEMONSTRATED PURSUANT TO STANDARDS APPROVED BY THE COMMISSION; OR

(VII) INSTALLATION OF ENERGY TECHNOLOGIES ELIGIBLE FOR NET METERING PURSUANT TO SECTION SIXTY-SIX J OF THIS ARTICLE.

(B) "PARTICIPATING ENERGY SERVICES COMPANY" MEANS AN ENTITY WHICH IS REGISTERED WITH THE COMMISSION AND APPROVED TO PROVIDE QUALIFIED ENERGY EFFICIENCY SERVICES AS DEFINED IN THIS SUBDIVISION TO END-USE CUSTOMERS USING THE TRANSMISSION AND DISTRIBUTION SYSTEM OF A COMBINED ELECTRIC AND GAS UTILITY.

S 2. Section 242 of the real property law is amended by adding a new subdivision 5 to read as follows:

5. DISCLOSURE PRIOR TO THE SALE OF REAL PROPERTY TO WHICH THE ON-BILL ENERGY SERVICES COMPANY ENERGY EFFICIENCY PAYMENT APPLIES. (A) ANY PERSON, FIRM, COMPANY, PARTNERSHIP OR CORPORATION OFFERING TO SELL REAL PROPERTY WHICH IS SUBJECT TO THE ON-BILL ENERGY SERVICES COMPANY ENERGY EFFICIENCY PAYMENT PURSUANT TO SECTION SIXTY-SIX-N OF THE PUBLIC SERVICE LAW SHALL PROVIDE WRITTEN NOTICE TO THE PROSPECTIVE PURCHASER OR THE PROSPECTIVE PURCHASER'S AGENT, STATING AS FOLLOWS: "THIS PROPERTY IS SUBJECT TO THE ON-BILL ENERGY SERVICES COMPANY ENERGY EFFICIENCY PAYMENT." SUCH NOTICE SHALL STATE THE PAYMENT SCHEDULE AND A DESCRIPTION OF THE ENERGY EFFICIENCY SERVICES INSTALLED AND SERVICES PROVIDED. SUCH NOTICE SHALL BE PROVIDED BY THE SELLER PRIOR TO ACCEPTING A PURCHASE OFFER.

(B) ANY PROSPECTIVE OR ACTUAL PURCHASER WHO HAS SUFFERED A LOSS DUE TO A VIOLATION OF THIS SUBDIVISION IS ENTITLED TO RECOVER ANY ACTUAL DAMAGES INCURRED FROM THE PERSON OFFERING TO SELL OR SELLING SAID REAL PROPERTY.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.