

6863--A

2013-2014 Regular Sessions

I N A S S E M B L Y

April 23, 2013

Introduced by M. of A. ROSENTHAL, MAISEL, ABINANTI, GABRYSZAK, MILLER, GOTTFRIED, ROBERTS, QUART, MARKEY, BRENNAN -- Multi-Sponsored by -- M. of A. COLTON, COOK, GLICK, LIFTON, RIVERA, ROBINSON, SEPULVEDA -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the public service law, in relation to the protection of public health from exposure to radon in natural gas

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 radon and its radioactive progeny are a major cause of lung cancer, and  
3 that there is no safe exposure level for public health protection. New  
4 York State has benefited from low levels of those elements in natural  
5 gas delivered to consumers, due to the low levels of radioactivity  
6 occurring in the gas from the sources upon which New York has primarily  
7 relied. However, there is now concern that natural gas may be coming to  
8 New York State from sources with high levels of radioactivity from those  
9 elements. It is the intent of this act to prevent levels of radon and  
10 its radioactive progeny from exceeding current levels in gas distributed  
11 to residential and other consumers, mindful of internationally-recog-  
12 nized mitigation action levels. It is the intent of this act to only  
13 regulate the distribution of gas within the state.

14 S 2. The public health law is amended by adding a new article 35-B to  
15 read as follows:

16 ARTICLE 35-B

17 RADON

18 SECTION 3560. DEFINITIONS.

19 3561. PROTECTION FROM RADON.

20 3562. LOCAL DISTRIBUTION REQUIREMENTS.

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

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1 S 3560. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT  
2 CLEARLY REQUIRES OTHERWISE:

3 1. "BQ/M{3}" MEANS BECQUEREL PER CUBIC METER, WHERE 1 BQ CORRESPONDS  
4 TO ONE RADIOACTIVE DISINTEGRATION PER SECOND. 100 BQ/M{3} IS EQUAL TO  
5 2.7 PCI/L.

6 2. "CURIE" IS A UNIT OF RADIOACTIVITY. ONE CURIE IS EQUAL TO 3.7 X  
7  $10^{10}$  RADIOACTIVE DECAYS PER SECOND. ONE PICO CURIE (PCI) IS  $1 \times 10^{-12}$   
8 CURIES.

9 3. "DELIVERY POINT" MEANS, AS DETERMINED BY THE COMMISSIONER UNDER  
10 THIS ARTICLE, A POINT IN A GAS CORPORATION'S INTRASTATE LOCAL DISTRIB-  
11 UTION SYSTEM WHERE THE DISTRIBUTION SYSTEM CONNECTS TO AND RECEIVES GAS  
12 FROM A GAS PIPELINE.

13 4. "GAS" AND "GAS CORPORATION" SHALL HAVE THE SAME MEANINGS AS THEY  
14 ARE DEFINED AND USED IN THE PUBLIC SERVICE LAW.

15 5. "LOCAL GAS DISTRIBUTION CORPORATION" MEANS A GAS CORPORATION THAT  
16 RECEIVES GAS FROM A PIPELINE AND DISTRIBUTES THIS GAS INTRASTATE TO ITS  
17 RETAIL CUSTOMERS.

18 S 3561. PROTECTION FROM RADON. 1. IT IS THE RESPONSIBILITY OF THE  
19 COMMISSIONER TO MINIMIZE, THROUGH THE APPLICATION OF THE ALARA (AS LOW  
20 AS REASONABLY ACHIEVABLE) PRINCIPLE, THE RISK TO MEMBERS OF THE PUBLIC  
21 POSED BY EXPOSURE TO RADON AND ITS RADIOACTIVE PROGENY. TO ACHIEVE THIS  
22 GOAL, THE COMMISSIONER MAY CALL FOR THE ASSISTANCE OF THE DEPARTMENT OF  
23 ENVIRONMENTAL CONSERVATION AND THE PUBLIC SERVICE COMMISSION AS NECES-  
24 SARY TO SUPPORT PERMITTING, MONITORING, COMPLIANCE AUDITING AND ENFORCE-  
25 MENT ACTION AS DIRECTED BY THE COMMISSIONER.

26 2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR DETERMINING, AND  
27 (WHERE THE COMMISSIONER DEEMS IT APPROPRIATE) DESIGNATING, DELIVERY  
28 POINTS WHERE GAS FROM A PIPELINE IS TRANSFERRED TO A LOCAL GAS DISTRIB-  
29 UTION CORPORATION'S DISTRIBUTION SYSTEM THAT ARE APPROPRIATE AND PRACTI-  
30 CABLE FOR MONITORING LEVELS OF RADON AND ITS RADIOACTIVE PROGENY TO  
31 ACHIEVE THE PURPOSES OF THIS ARTICLE.

32 3. IN ORDER TO ACHIEVE THE GOALS ESTABLISHED IN THIS SECTION, EVERY  
33 LOCAL GAS DISTRIBUTION CORPORATION SELLING OR OTHERWISE PROVIDING GAS TO  
34 CUSTOMERS IN NEW YORK SHALL, CONSISTENT WITH THIS ARTICLE, ESTABLISH AND  
35 MAINTAIN A PROGRAM TO CONTINUOUSLY MONITOR THE LEVEL OF RADON AND ITS  
36 RADIOACTIVE PROGENY, MEASURED AS GROSS ALPHA ACTIVITY, IN THE NATURAL  
37 GAS DELIVERED TO THE LOCAL GAS DISTRIBUTION CORPORATION AT EACH DELIVERY  
38 POINT, REPORTING SUCH LEVELS THROUGH A PUBLICLY-ACCESSIBLE WEBSITE ON A  
39 REAL TIME BASIS. THE PROGRAM SHALL INCLUDE PROVISION FOR GENERATING  
40 ALERTS TO THE LOCAL GAS DISTRIBUTION CORPORATION RELATING TO THE MONI-  
41 TORED LEVELS AND APPROPRIATE RESPONSES.

42 4. THE COMMISSIONER SHALL ESTABLISH A COMPLIANCE ASSURANCE SYSTEM FOR  
43 THE MONITORING SYSTEMS REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS  
44 SECTION, INCLUDING A PERIODIC PHYSICAL INSPECTION AND MEASUREMENT  
45 PROGRAM TO BE IMPLEMENTED BY THE DEPARTMENT AT THE VARIOUS DELIVERY  
46 POINTS. THIS PROGRAM SHALL BE DESIGNED SO THAT EACH DELIVERY POINT IS  
47 INSPECTED AND SAMPLED AT LEAST ONCE PER YEAR BY THE DEPARTMENT.

48 5. (A) THE COMMISSIONER SHALL MAKE REGULATIONS AND ESTABLISH A PROGRAM  
49 TO IMPLEMENT AND ENFORCE THIS ARTICLE. THE COMMISSIONER SHALL COMPLY  
50 WITH THIS PARAGRAPH WITHIN ONE YEAR AFTER THIS ARTICLE SHALL BECOME A  
51 LAW.

52 (B) AS PART OF THIS ENFORCEMENT PROGRAM, WHENEVER THE COMMISSIONER  
53 DETERMINES THAT A LOCAL GAS DISTRIBUTION CORPORATION IS NOT IN COMPLI-  
54 ANCE WITH THE REQUIREMENTS OF THIS ARTICLE, HE OR SHE SHALL ISSUE AN  
55 ORDER REQUIRING SUCH LOCAL GAS DISTRIBUTION CORPORATION TO COMPLY,  
56 INCLUDING THE DEVELOPMENT AND IMPLEMENTATION OF A PLAN OF CORRECTION.

1 WHERE NECESSARY, THE COMMISSIONER MAY ORDER THE FLOW OF NATURAL GAS AT  
2 ANY DELIVERY POINT THAT IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF  
3 THIS ARTICLE BE SHUT OFF UNTIL A LOCAL GAS DISTRIBUTION CORPORATION  
4 BRINGS THAT DELIVERY POINT INTO COMPLIANCE WITH THIS ARTICLE. THE  
5 COMMISSIONER MAY IMPOSE A CIVIL FINE OF UP TO TWENTY-FIVE THOUSAND  
6 DOLLARS PER DAY PER DELIVERY POINT ON THE LOCAL GAS DISTRIBUTION CORPO-  
7 RATION UNTIL THE RADON AND ITS RADIOACTIVE PROGENY LEVELS AT EACH DELIV-  
8 ERY POINT THAT IS OUT OF COMPLIANCE HAVE BEEN BROUGHT INTO COMPLIANCE  
9 WITH THIS ARTICLE. THE COMMISSIONER MAY COMMENCE A CIVIL ACTION OR  
10 PROCEEDING WHENEVER A LOCAL GAS DISTRIBUTION CORPORATION FAILS TO COMPLY  
11 WITH AN ORDER ISSUED BY THE COMMISSIONER UNDER THIS ARTICLE.

12 6. ANY PERSON MAY COMMENCE A CIVIL ACTION OR PROCEEDING AGAINST:

13 (A) ANY LOCAL GAS DISTRIBUTION CORPORATION THAT IS NOT IN COMPLIANCE  
14 WITH THE REQUIREMENTS OF THIS ARTICLE, AND

15 (B) THE COMMISSIONER IF HE OR SHE FAILS TO ENFORCE THE REQUIREMENTS OF  
16 THIS ARTICLE, PROVIDED THAT THE COMMISSIONER HAS RECEIVED NOTICE OF THE  
17 INTENT TO COMMENCE SUCH CIVIL ACTION OR PROCEEDING AND HAS FAILED WITHIN  
18 THIRTY DAYS OF RECEIVING SUCH NOTICE TO TAKE ENFORCEMENT ACTION AGAINST  
19 A LOCAL GAS DISTRIBUTION CORPORATION THAT IS NOT IN COMPLIANCE WITH THIS  
20 ARTICLE. THE COURT IN SUCH ACTION OR PROCEEDING MAY ISSUE AN INJUNCTION  
21 OR OTHER ORDER COMPELLING COMPLIANCE AND SHALL ENTER AN ORDER REQUIRING  
22 A LOCAL GAS DISTRIBUTION CORPORATION OR THE COMMISSIONER, AS THE CASE  
23 MAY BE, TO PAY THE REASONABLE LEGAL FEES AND EXPENSES INCURRED BY THE  
24 INDIVIDUAL OR ORGANIZATION THAT COMMENCED THE CIVIL ACTION OR PROCEED-  
25 ING.

26 S 3562. LOCAL DISTRIBUTION REQUIREMENTS. 1. EACH LOCAL GAS CORPORATION  
27 SHALL ESTABLISH AND IMPLEMENT A RADON MITIGATION RESPONSE PROGRAM TO  
28 ENSURE THAT THE LEVEL OF RADON AND ITS RADIOACTIVE PROGENY AT ANY DELIV-  
29 ERY POINT SHALL NOT EXCEED: 100 BQ/M{3} (EQUIVALENT TO 2.7 PCI/L) AVER-  
30 AGED OVER ANY ONE HOUR PERIOD, 75 BQ/M{3} (EQUIVALENT TO 2.02 PCI/L)  
31 AVERAGED OVER ANY 24 HOUR PERIOD, 50 BQ/M{3} (EQUIVALENT TO 1.37 PCI/L)  
32 AVERAGED OVER ANY SEVEN DAY PERIOD.

33 2. LOCAL GAS DISTRIBUTION CORPORATIONS ARE PROHIBITED FROM BUILDING  
34 NEW OR ADDITIONAL STORAGE FACILITIES TO MITIGATE RADON LEVELS.

35 3. IT IS UNLAWFUL FOR ANY LOCAL GAS DISTRIBUTION CORPORATION TO PASS  
36 HARMFUL EFFECTS OF MITIGATION TO OTHER REGIONS IN THE STATE.

37 4. NO LOCAL GAS DISTRIBUTION CORPORATION SHALL DISTRIBUTE GAS UNLESS  
38 IT IS REASONABLY CERTAIN THAT THE LEVEL OF RADON AND ITS RADIOACTIVE  
39 PROGENY IN THE GAS WHEN IT IS RECEIVED BY RESIDENTIAL OR OTHER CONSUMERS  
40 WILL BE AT OR BELOW THE LEVEL OF 100 BQ/M{3} (EQUIVALENT TO 2.7 PCI/L)  
41 AVERAGED OVER ANY ONE HOUR PERIOD.

42 S 3. Subdivision 1 of section 18-a of the public service law, as  
43 amended by section 2 of part NN of chapter 59 of the laws of 2009, is  
44 amended to read as follows:

45 1. All costs and expenses of the department and commission shall be  
46 paid pursuant to appropriation on the certification of the chairman of  
47 the department and upon the audit and warrant of the comptroller. THE  
48 COSTS AND EXPENSES OF THE DEPARTMENT AND COMMISSION SHALL INCLUDE AN  
49 AMOUNT TO BE SUBALLOCATED TO THE DEPARTMENT OF HEALTH FOR THE COSTS AND  
50 EXPENSES OF ADMINISTERING ARTICLE THIRTY-FIVE-B (RADON) OF THE PUBLIC  
51 HEALTH LAW. The state treasury shall be reimbursed therefore by payments  
52 to be made thereto from all moneys collected pursuant to this chapter.  
53 The total of such costs and expenses shall be borne by the public utili-  
54 ty companies (including for the purposes of this section municipalities  
55 other than municipalities as defined in section eighty-nine-1 of this  
56 chapter), corporations (including the power authority of the state of

1 New York), and persons subject to the commission's regulation, to be  
2 assessed in the manner provided in subdivisions two, three and four of  
3 this section and section two hundred seventeen of this chapter.

4 S 4. Paragraph (a) of subdivision 2 of section 18-a of the public  
5 service law, as amended by section 2 of part A of chapter 173 of the  
6 laws of 2013, is amended to read as follows:

7 (a) The chairman of the department shall estimate prior to the start  
8 of each state fiscal year the total costs and expenses, including the  
9 compensation and expenses of the commission and the department, their  
10 officers, agents and employees, and including the cost of retirement  
11 contributions, social security, health and dental insurance, survivor's  
12 benefits, workers' compensation, unemployment insurance and other fringe  
13 benefits required to be paid by the state for the personnel of the  
14 commission and the department, and including all other items of mainte-  
15 nance and operation expenses, and all other direct and indirect costs.  
16 THE ESTIMATE BY THE CHAIRMAN OF THE DEPARTMENT RELATING TO THE COSTS AND  
17 EXPENSES OF THE DEPARTMENT OF HEALTH OF ADMINISTERING ARTICLE  
18 THIRTY-FIVE-B (RADON) OF THE PUBLIC HEALTH LAW SHALL BE MADE IN AGREE-  
19 MENT WITH THE COMMISSIONER OF HEALTH AND THE DIRECTOR OF THE BUDGET.  
20 Based on such estimates, the chairman shall determine the amount to be  
21 paid by each assessed public utility company and the Long Island power  
22 authority and a bill shall be rendered to each such public utility  
23 company and authority.

24 S 5. If any provision of this act, or any application of any provision  
25 of this act, is held to be invalid, or to violate or be inconsistent  
26 with any federal law or regulation, that shall not affect the validity  
27 or effectiveness of any other provision of this act, or of any other  
28 application of any provision of this act, which can be given effect  
29 without that provision or application; and to that end, the provisions  
30 and applications of this act are severable.

31 S 6. This act shall take effect immediately; provided, however, that  
32 section two of this act shall take effect sixty days after it shall  
33 become a law; and provided further, that if chapter 173 of the laws of  
34 2013 shall not have taken effect on or before such date then section  
35 four of this act shall take effect on the same date and in the same  
36 manner as such chapter of the laws of 2013 takes effect. Effective imme-  
37 diately, the commissioner of health, the chair of the department of  
38 public service, the comptroller, and the director of the budget are  
39 authorized to make regulations and take any other measures necessary to  
40 implement this act on its effective date.