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

6863--B

2013-2014 Regular Sessions

I N A S S E M B L Y

April 23, 2013

Introduced by M. of A. ROSENTHAL, ABINANTI, MILLER, GOTTFRIED, ROBERTS, QUART, MARKEY, BRENNAN, OTIS, PAULIN, CAHILL -- 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 -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- 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:

Section 1. Legislative findings and intent. The legislature finds that radon and its radioactive progeny are a major cause of lung cancer, and that there is no safe exposure level for public health protection. New York State has benefited from low levels of those elements in natural gas delivered to consumers, due to the low levels of radioactivity occurring in the gas from the sources upon which New York has primarily relied. However, there is now concern that natural gas may be coming to New York State from sources with high levels of radioactivity from those elements. It is the intent of this act to prevent levels of radon and its radioactive progeny from exceeding current levels in gas distributed to residential and other consumers, mindful of internationally-recognized mitigation action levels. It is the intent of this act to only regulate the distribution of gas within the state.

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

ARTICLE 35-B

RADON

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

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SECTION 3560. DEFINITIONS.
3561. PROTECTION FROM RADON.
3562. GAS CORPORATION REQUIREMENTS.

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

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

2. "CURIE" IS A UNIT OF RADIOACTIVITY. ONE CURIE IS EQUAL TO 3.7 X 10{10} RADIOACTIVE DECAYS PER SECOND. ONE PICO CURIE (PCI) IS 1X10{-12} CURIES.

3. "DELIVERY POINT" MEANS, AS DETERMINED BY THE COMMISSIONER UNDER THIS ARTICLE, A POINT IN A GAS CORPORATION'S DISTRIBUTION SYSTEM.

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

S 3561. PROTECTION FROM RADON. 1. IT IS THE RESPONSIBILITY OF THE COMMISSIONER TO MINIMIZE, THROUGH THE APPLICATION OF THE ALARA (AS LOW AS REASONABLY ACHIEVABLE) PRINCIPLE, THE RISK TO MEMBERS OF THE PUBLIC POSED BY EXPOSURE TO RADON AND ITS RADIOACTIVE PROGENY. TO ACHIEVE THIS GOAL, THE COMMISSIONER MAY CALL FOR THE ASSISTANCE OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE PUBLIC SERVICE COMMISSION AS NECESSARY TO SUPPORT PERMITTING, MONITORING, COMPLIANCE AUDITING AND ENFORCEMENT ACTION AS DIRECTED BY THE COMMISSIONER.

2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR DETERMINING, AND (WHERE THE COMMISSIONER DEEMS IT APPROPRIATE) DESIGNATING, DELIVERY POINTS WHERE GAS FROM A PIPELINE IS TRANSFERRED TO A GAS CORPORATION'S DISTRIBUTION SYSTEM THAT ARE APPROPRIATE AND PRACTICABLE FOR MONITORING LEVELS OF RADON AND ITS RADIOACTIVE PROGENY TO ACHIEVE THE PURPOSES OF THIS ARTICLE.

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

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

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

(B) AS PART OF THIS ENFORCEMENT PROGRAM, WHENEVER THE COMMISSIONER DETERMINES THAT A GAS CORPORATION IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE, HE OR SHE SHALL ISSUE AN ORDER REQUIRING SUCH GAS CORPORATION TO COMPLY, INCLUDING THE DEVELOPMENT AND IMPLEMENTATION OF A PLAN OF CORRECTION. WHERE NECESSARY, THE COMMISSIONER MAY ORDER THE FLOW OF NATURAL GAS AT ANY DELIVERY POINT THAT IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE BE SHUT OFF UNTIL A GAS CORPORATION BRINGS THAT DELIVERY POINT INTO COMPLIANCE WITH THIS ARTICLE. THE COMMISSIONER

MAY IMPOSE A CIVIL FINE OF UP TO TWENTY-FIVE THOUSAND DOLLARS PER DAY PER DELIVERY POINT ON THE GAS CORPORATION UNTIL THE RADON AND ITS RADIOACTIVE PROGENY LEVELS AT EACH DELIVERY POINT THAT IS OUT OF COMPLIANCE HAVE BEEN BROUGHT INTO COMPLIANCE WITH THIS ARTICLE. THE COMMISSIONER MAY COMMENCE A CIVIL ACTION OR PROCEEDING WHENEVER A GAS CORPORATION FAILS TO COMPLY WITH AN ORDER ISSUED BY THE COMMISSIONER UNDER THIS ARTICLE.

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

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

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

S 3562. GAS CORPORATION REQUIREMENTS. 1. EACH GAS CORPORATION SHALL ESTABLISH AND IMPLEMENT A RADON MITIGATION RESPONSE PROGRAM TO ENSURE THAT THE LEVEL OF RADON AND ITS RADIOACTIVE PROGENY AT ANY DELIVERY POINT SHALL NOT EXCEED: 100 BQ/M{3} (EQUIVALENT TO 2.7 PCI/L) AVERAGED OVER ANY ONE HOUR PERIOD, 75 BQ/M{3} (EQUIVALENT TO 2.02 PCI/L) AVERAGED OVER ANY 24 HOUR PERIOD, 50 BQ/M{3} (EQUIVALENT TO 1.37 PCI/L) AVERAGED OVER ANY SEVEN DAY PERIOD.

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

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

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

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

1. All costs and expenses of the department and commission shall be paid pursuant to appropriation on the certification of the chairman of the department and upon the audit and warrant of the comptroller. THE COSTS AND EXPENSES OF THE DEPARTMENT AND COMMISSION SHALL INCLUDE AN AMOUNT TO BE SUBALLOCATED TO THE DEPARTMENT OF HEALTH FOR THE COSTS AND EXPENSES OF ADMINISTERING ARTICLE THIRTY-FIVE-B OF THE PUBLIC HEALTH LAW. The state treasury shall be reimbursed [therefore] THEREFOR by payments to be made thereto from all moneys collected pursuant to this chapter. The total of such costs and expenses shall be borne by the public utility companies (including for the purposes of this section municipalities other than municipalities as defined in section eighty-nine-l of this chapter), corporations (including the power authority of the state of New York), and persons subject to the commission's regulation, to be assessed in the manner provided in subdivisions two, three and four of this section and section two hundred seventeen of this chapter.

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

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

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

S 6. This act shall take effect immediately; provided, however, that section two of this act shall take effect sixty days after it shall become a law. Effective immediately, the commissioner of health, the chair of the public service commission, the comptroller, and the director of the budget are authorized to make regulations and take any other measures necessary to implement this act on its effective date.