

778

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 7, 2015

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Introduced by M. of A. ROSENTHAL, GOTTFRIED, ABINANTI, MILLER, ROBERTS, QUART, MARKEY, BRENNAN, OTIS, PAULIN, CAHILL, DINOWITZ, GUNTHER, ENGLEBRIGHT, BUCHWALD -- Multi-Sponsored by -- M. of A. COLTON, COOK, GALEF, GLICK, LIFTON, MAYER, RIVERA, ROBINSON, SEPULVEDA, THIELE -- read once and referred to the Committee on Health

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. GAS CORPORATION 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 DISTRIBUTION SYSTEM.

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

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

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

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

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

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

46 (B) AS PART OF THIS ENFORCEMENT PROGRAM, WHENEVER THE COMMISSIONER  
47 DETERMINES THAT A GAS CORPORATION IS NOT IN COMPLIANCE WITH THE REQUIRE-  
48 MENTS OF THIS ARTICLE, HE OR SHE SHALL ISSUE AN ORDER REQUIRING SUCH GAS  
49 CORPORATION TO COMPLY, INCLUDING THE DEVELOPMENT AND IMPLEMENTATION OF A  
50 PLAN OF CORRECTION. WHERE NECESSARY, THE COMMISSIONER MAY ORDER THE FLOW  
51 OF NATURAL GAS AT ANY DELIVERY POINT THAT IS NOT IN COMPLIANCE WITH THE  
52 REQUIREMENTS OF THIS ARTICLE BE SHUT OFF UNTIL A GAS CORPORATION BRINGS  
53 THAT DELIVERY POINT INTO COMPLIANCE WITH THIS ARTICLE. THE COMMISSIONER  
54 MAY IMPOSE A CIVIL FINE OF UP TO TWENTY-FIVE THOUSAND DOLLARS PER DAY  
55 PER DELIVERY POINT ON THE GAS CORPORATION UNTIL THE RADON AND ITS RADIO-  
56 ACTIVE 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<sup>3</sup> (EQUIVALENT TO 2.7 PCI/L) AVERAGED OVER ANY ONE HOUR PERIOD, 75 BQ/M<sup>3</sup> (EQUIVALENT TO 2.02 PCI/L) AVERAGED OVER ANY 24 HOUR PERIOD, 50 BQ/M<sup>3</sup> (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<sup>3</sup> (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-1 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:

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

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

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