

# STATE OF NEW YORK

8711--A

## IN SENATE

May 10, 2018

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the energy law, in relation to implementing the New York oilheat education and research act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The energy law is amended by adding a new article 14 to  
2 read as follows:

### ARTICLE 14

#### NEW YORK OILHEAT EDUCATION AND RESEARCH ACT

3 Section 14-101. Short title.

4 14-102. Definitions.

5 14-103. Referendum; creation and termination of a program.

6 14-104. New York oilheat education and research council.

7 14-105. Assessments.

8 14-106. Compliance.

9 14-107. Lobbying restrictions.

10 14-108. Pricing.

11 14-109. Relation to other programs.

12 § 14-101. Short title. This article shall be known and may be cited as  
13 the New York oilheat education and research act.

14 § 14-102. Definitions. For purposes of this article, unless the  
15 context otherwise requires:

16 1. "Council" means a New York oilheat education and research council  
17 created pursuant to section 14-104 of this article;

18 2. "President" means the chairman of NYSERDA or his or her designee;

19 3. "Education" means any action to provide information regarding  
20 oilheat fuel equipment, mechanical and technical practices, and oilheat  
21 fuel uses to consumers, and members of the oilheat fuel industry;

22 4. "Industry" means those persons involved in the production, trans-  
23 portation, and sale of oilheat fuel, and the manufacture and distrib-  
24 ution of oilheat fuel utilization equipment;

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

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5. "Industry trade association" means an organization exempt from tax, under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code of 1986, representing the oilheat fuel industry;

6. "NYSERDA" means the New York state energy and research development authority;

7. "Public member" means a designee of the president of the New York state energy research and development authority;

8. "Qualified industry organization" means the New York state energy coalition, the Empire State energy association or a successor association of these associations, or any other oilheat fuel industry organization;

9. "Research" means any type of study, investigation or other activities designed to advance the image, desirability, usage, marketability, efficiency, and safety of oilheat fuel and to further the development of such information;

10. "Retail marketer" means a person engaged primarily in the sale of oilheat fuel to the ultimate consumer or to retail oilheat fuel dispensers;

11. "Wholesale distributor" means a person that:

(a) (i) produces No. 1 distillate or No. 2 dyed distillate;

(ii) imports No. 1 distillate or No. 2 dyed distillate; or

(iii) transports No. 1 distillate or No. 2 dyed distillate across state boundaries or among local marketing areas; and

(b) sells the distillate to another person that does not produce, import, or transport No. 1 distillate or No. 2 dyed distillate across state boundaries or among local marketing areas;

12. "No. 1 distillate" means fuel oil classified as No. 1 distillate by the American Society for Testing and Materials;

13. "No. 2 dyed distillate" means fuel oil classified as No. 2 distillate by the American Society for Testing and Materials that is indelibly dyed in accordance with regulations prescribed by the secretary of the treasury under section 4082(a)(2) of the Internal Revenue Code of 1986; and

14. "Oilheat fuel" means fuel that is:

(a) (i) No. 1 distillate;

(ii) No. 2 dyed distillate;

(iii) a liquid blended with No. 1 distillate or No. 2 dyed distillate; or

(iv) a biobased liquid; and

(b) used as a fuel for nonindustrial commercial or residential space or hot water heating.

§ 14-103. Referendum; creation and termination of a program. 1. Qualified industry organizations shall conduct at their own expense, a referendum among producers and retail marketers for the creation of a New York oilheat education and research council. The council, if established, shall reimburse the qualified industry organizations for the cost of the referendum accounting and documentation. The referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations. The results, as certified by an independent auditing firm, shall be submitted to the president within thirty days of certification. Voting rights in the referendum shall be based on the volume of oilheat fuel sold in the previous calendar year. Upon approval of those persons representing two-thirds of the total value of oilheat fuel voted in the retail marketer class and two-thirds of all oilheat fuel voted in the wholesale distributor class, the council shall be established, and shall be authorized to levy an assessment on oilheat

1 fuel in accordance with section 14-105 of this article. All persons  
2 voting in the referendum shall certify to the independent auditing firm  
3 the volume of oilheat fuel represented by their vote.

4 2. On the council's own initiative, or on petition to the council by  
5 wholesale distributors and retail marketers representing thirty-five  
6 percent of the volume of oilheat fuel in each class, the council shall,  
7 at its own expense, hold a referendum to be conducted by an independent  
8 auditing firm selected by the council, to determine whether the industry  
9 favours termination or suspension of the council. Termination or suspen-  
10 sion shall not take effect unless it is approved by persons representing  
11 more than one-half of the total volume of oilheat fuel in the retail  
12 marketer class and more than one-half the total volume of oilheat fuel  
13 in the wholesale distributor class.

14 § 14-104. New York oilheat education and research council. 1. The  
15 qualified industry organizations shall select all retail marketer  
16 members and wholesale distributor members of the council. The president  
17 shall designate one public member. Vacancies in the unfinished terms of  
18 council members shall be filled in the same manner as were the original  
19 appointments.

20 2. In selecting members of the council, the qualified industry organ-  
21 izations shall give due regard to selecting a council that is represen-  
22 tative of the industry, including representation of:

- 23 (a) heating oil refiners;  
24 (b) interstate and intrastate operators among retail marketers;  
25 (c) large and small companies among wholesale distributors and retail  
26 marketers; and  
27 (d) diverse geographic regions of the state.

28 3. The council shall consist of no less than five and up to seven  
29 members, with no less than four and up to six members representing  
30 retail marketers and wholesale distributors, and one public member.  
31 Other than the public member, council members shall be full-time employ-  
32 ees or owners of businesses in the industry. Only one person at a time  
33 from any company or its affiliate may serve on the council. The presi-  
34 dent may serve as an ex-officio non-voting member of the council.

35 4. Council members shall receive no compensation for their services,  
36 nor shall council members be reimbursed for expenses relating to their  
37 service, except that public members, upon request, may be reimbursed for  
38 reasonable expenses directly related to their participation in council  
39 meetings.

40 5. Council members shall serve terms of three years and may not serve  
41 more than two full consecutive terms. Members filling unexpired terms  
42 may serve not more than a total of seven consecutive years. Former  
43 members of the council may be returned to the council if they have not  
44 been members for a period of two years. Initial appointments to the  
45 council shall be for terms of one, two, and three years staggered to  
46 provide for the selection of four members each year. The council shall  
47 notify the president of the name, address, and oilheat fuel-related  
48 affiliation, if any, of a council member within thirty days after the  
49 appointment of the member to the council.

50 6. The council shall develop programs and projects and enter into  
51 contracts or agreements for implementing this article, including  
52 programs to enhance consumer and employee safety and training, to  
53 provide for research and development of clean and efficient oilheat fuel  
54 utilization equipment, to inform and educate the public about efficien-  
55 cies, safety and other issues associated with the use of oilheat fuel,  
56 and to provide for the payment of the costs thereof with funds collected

1 pursuant to this article. The council shall coordinate its activities  
2 with industry trade associations, institutions of higher education and  
3 others as appropriate to provide efficient delivery of services and to  
4 avoid unnecessary duplication of activities.

5 7. Issues related to research and development, safety, education, and  
6 training shall be given priority by the council in the development of  
7 its programs and projects.

8 8. The council shall select from among its members a chairperson and  
9 other officers as necessary, may establish committees and subcommittees  
10 of the council, and shall adopt rules and bylaws for the conduct of  
11 business and the implementation of this article. The council shall  
12 establish procedures for the solicitation of industry comment and recom-  
13 mendations on any significant plans, programs, and projects to be funded  
14 by the council. The council may establish advisory committees of persons  
15 other than council members.

16 9. At the beginning of each fiscal period, the council shall prepare a  
17 budget plan for the next fiscal period, including the probable cost of  
18 all programs, projects, and contracts and a recommended rate of assess-  
19 ment sufficient to cover such costs. The council shall submit the  
20 proposed budget to the president for review and comment. The president  
21 may recommend programs and activities considered appropriate.

22 10. The council shall keep minutes, books, and records that clearly  
23 reflect all of the acts and transactions of the council and make public  
24 such information. The books of the council shall be audited by a certi-  
25 fied public accountant at least once each fiscal year and at such other  
26 times as the council may designate. The expense of the audit shall be  
27 the responsibility of the council. Copies of such audit shall be  
28 provided to all members of the council, all qualified industry organiza-  
29 tions, and to other members of the industry upon request.

30 § 14-105. Assessments. 1. The council shall set the assessment at no  
31 greater than two-tenths of one cent per gallon of oilheat fuel.

32 2. The wholesale distributor shall make the assessment based on the  
33 volume of oilheat fuel sold. The assessment, when made, shall be listed  
34 as a separate line item on the bill labeled "New York Oilheat Education  
35 and Research Assessment". Assessments collected from purchasers of  
36 oilheat fuel are payable by the wholesale distributor to the council on  
37 a monthly basis by the twenty-fifth of the month following the month of  
38 collection.

39 If payment is not made to the council by the due date under this  
40 subdivision, an interest penalty of one percent of any amount unpaid  
41 shall be added for each month or fraction of a month after the due date,  
42 until final payment is made.

43 3. The council may establish an alternative means of collecting the  
44 assessment if another means is found to be more efficient and effective.  
45 The council may establish a late payment charge and rate of interest to  
46 be imposed on any person who fails to remit or pay to the council any  
47 amount due under this article.

48 4. Pending disbursement pursuant to a program, plan, or project, the  
49 council shall invest funds collected through assessments, and any other  
50 funds received by the council, only in obligations of the United States  
51 or any agency thereof, in general obligations of any state or political  
52 subdivision thereof, in any interest-bearing account or certificate of  
53 deposit of a bank that is a member of the Federal Reserve System, or in  
54 obligations fully guaranteed as to principal and interest by the United  
55 States.

1     § 14-106. Compliance. The supreme court is vested with the jurisdic-  
2 tion specifically to enforce the provisions of this article, and prevent  
3 or restrain any person from violating any such provision. A successful  
4 action for compliance under this section may also require payment by the  
5 defendant of the costs incurred by the council in bringing the action.

6     § 14-107. Lobbying restrictions. No funds collected by the council  
7 shall be used in any manner for influencing legislation or elections,  
8 except that the council may recommend to the president changes in this  
9 article or other statutes that would further the purpose of this arti-  
10 cle.

11     § 14-108. Pricing. In all cases, the price of oilheat fuel shall be  
12 determined by market forces. Consistent with the antitrust laws, the  
13 council may take no action, nor may any provision of this article be  
14 interpreted as establishing an agreement to pass along to consumers the  
15 cost of the assessment provided for in section 14-105 of this article.

16     § 14-109. Relation to other programs. Nothing in this article may be  
17 construed to preempt or supersede any other program relating to oilheat  
18 fuel education and research organized and operated under the laws of the  
19 state of New York.

20     § 2. This act shall take effect immediately.