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:

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

ARTICLE 14

NEW YORK OILHEAT EDUCATION AND RESEARCH ACT

Section 14-101. Short title.
14-102. Definitions.
14-103. Referendum; creation and termination of a program.
14-104. New York oilheat education and research council.
14-105. Assessments.
14-106. Compliance.
14-107. Lobbying restrictions.
14-108. Pricing.
14-109. Relation to other programs.

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

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

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

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

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

4. "Industry" means those persons involved in the production, transportation, and sale of oilheat fuel, and the manufacture and distribution of oilheat fuel utilization equipment;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] 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

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

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

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

2. In selecting members of the council, the qualified industry organizations shall give due regard to selecting a council that is representative of the industry, including representation of:

(a) heating oil refiners;

(b) interstate and intrastate operators among retail marketers;

(c) large and small companies among wholesale distributors and retail marketers; and

(d) diverse geographic regions of the state.

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

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

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

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

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

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

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

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

10. The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council and make public such information. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. The expense of the audit shall be the responsibility of the council. Copies of such audit shall be provided to all members of the council, all qualified industry organizations, and to other members of the industry upon request.

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.