STATE OF NEW YORK

6875

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. LUCAS -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the executive law, the public service law, the labor law, the state finance law, the public health law, the public authorities law, and the public housing law, in relation to implementing several programs to improve indoor air quality, including establishing photo-catalytic air scavenging technology certification centers and a weatherization and energy efficiency training program, and establishing the office of workforce development and indoor air quality management training, minimum wage rates for indoor air quality workers, and an indoor air quality fund

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

Section 1. This act shall be known and may be cited as the "sick building syndrome and indoor air quality workforce training program act".

§ 2. Legislative intent and findings. The intent of this act is to regulate and control "Sick Building Syndrome" by establishing policies that improve indoor air quality in all buildings and facilities, including public and private schools, government buildings, hospitals, and residential buildings.

The act will establish an independent entity known as the indoor air quality control board within NYSERDA, the department of public health, the office of children and family services, and the empire state development corporation which will oversee the implementation and enforcement of policies and regulations related to sick building syndrome. This act also seeks to generate professional employment opportunities within the local communities through the creation of trained technicians certified in maintaining and installing new air-quality control technology.

Nothing in this act is intended to limit the authority of any district, government agency, office, or employers to enact and enforce

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

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policies pertaining to indoor air quality in the workplace or to exempt anyone from any requirement of federal law or pose any obstacle to the federal enforcement of federal law.

§ 3. Article 19 of the environmental conservation law is amended by adding a new title 13 to read as follows:

TITLE 13

INDOOR AIR QUALITY AND HAZARDOUS AIR POLLUTANTS

Section 19-1301. Definitions.
19-1303. Photo-catalytic air scavenging technology certification centers.
19-1305. Weatherization and energy efficiency training program.
19-1307. Indoor air quality index oversight committee.
19-1309. Rules and regulations.

§ 19-1301. Definitions.

For the purposes of this title, the following terms shall have the following meanings:

1. "Indoor air quality" means air quality within and around a covered entity which affects the health and comfort of individuals within or near such building.

2. "Hazardous air pollutants" means any substance listed as a substance hazardous to the public health, safety or the environment in regulations promulgated pursuant to article thirty-seven of this chapter which may affect indoor air quality and shall include, but not be not limited to lead, radon, asbestos, formaldehyde, volatile organic compounds, dust, mold, dander, excess moisture, pesticides, substances from fuel-burning combustion appliances, tobacco products, bacteria, viruses and any substance known to cause health effects which exceeds a specified level as designated by the commissioner.

3. "Health effects" means changes to a person's health and wellness that occur immediately upon exposure to a hazardous air pollutant, including, but not limited to, irritation of the eyes, nose, or throat, headaches, dizziness and fatigue, and changes to a person's health and wellness in the long-term due to being exposed to a hazardous air pollutant, including, but not limited to, respiratory diseases, heart disease, asthma and lung cancer.

§ 19-1303. Photo-catalytic air scavenging technology certification centers.

1. Within one year of the effective date of this title, the department shall establish photo-catalytic air scavenging technology certification centers. Such centers shall increase the number of well-trained indoor air quality workers in order to mitigate the health effects of indoor air pollution. The empire state development corporation and the office of housing and community renewal on an individual basis provide feasibility support for indoor air quality audits as a part of commercial and residential development.

2. The photo-catalytic air scavenging technology certification centers established under subdivision one of this section shall include, but not be limited to:

(a) developing a curriculum that includes courses specifically focused on photo-catalytic air scavenging technology, building science and indoor air quality covering topics including, but not limited to, building systems and components, HVAC systems, indoor air quality, and energy conservation.

(b) partnering with vocational schools, community colleges, and universities to offer training programs for photo-catalytic air scavenging technology, building science and indoor air quality. Such insti-

tutions may provide the necessary facilities, equipment, and instructors to deliver the training.

(c) providing on-the-job training opportunities for indoor air quality workers to gain hands-on experience in building science and indoor air quality including, but not limited to, internships, apprenticeships, and job shadowing programs with experienced professionals.

(d) encouraging and supporting indoor air quality workers to pursue certification and licensing in photo-catalytic air scavenging technology, building science and indoor air quality through organizations such as the American society of heating, refrigerating and air-conditioning engineers or the indoor air quality association.

(e) encouraging and supporting continuing education opportunities for photo-catalytic air scavenging technology, building science and indoor air quality workers on the latest developments in photo-catalytic air scavenging technology, building science and indoor air quality including, but not limited to, workshops, seminars, and conferences.

(f) recognizing and rewarding indoor air quality workers who have achieved certifications, licenses, and other industry credentials in photo-catalytic air scavenging technology, building science and indoor air quality through department developed incentive programs.

3. Monies from the indoor air quality fund, established by section ninety-nine-qq of the state finance law, may be expended for the purposes provided for in this section.

§ 19-1305. Weatherization and energy efficiency training program.

1. Within one year of the effective date of this title, the department shall establish a weatherization and energy efficiency training program. Such program shall be established to mitigate the health effects of indoor air pollution by increasing awareness of hazardous air pollutants which cause poor indoor air quality and the health effects of poor indoor air quality.

2. The weatherization and energy efficiency training program established under subdivision one of this section shall include, but not be limited to:

(a) establishing training opportunities for building owners, managers, and residents on weatherization and energy efficiency to prevent hazardous air pollutants from infiltrating and contributing to poor indoor air quality.

(b) partnering with organizations, educational institutions and experts in the field of building science and energy efficiency to provide training programs including, but not limited to:

(i) weatherization and energy efficiency;

(ii) identifying and sealing air leaks;

(iii) insulation;

(iv) ventilation;

(v) HVAC system maintenance and upgrades; and

(vi) renewable energy solutions.

(c) providing on-the-job training opportunities for building owners, managers and residents to gain hands-on experience in weatherization and energy efficiency.

(d) establishing a certification program for building owners, managers and residents who have completed a training program established under this section to recognize their knowledge and skills in weatherization and energy efficiency.

(e) recognizing and rewarding building owners, managers and residents who have achieved certifications, licenses, and other industry creden-

tials in building science and energy efficiency through department developed incentive programs.

(f) providing incentives for building owners, managers and residents who exceed the weatherization and energy efficiency standards through department developed incentive programs to ensure that building owners, managers and residents have the necessary knowledge and skills to prevent poor ozone and harmful air quality index from infiltrating and contributing to poor indoor air quality.

(g) developing and implementing community outreach programs to educate the public on indoor air quality, hazardous air pollutants, and health effects risk reduction, as well as the availability of the training programs established under this title.

3. Monies from the indoor air quality fund, established by section ninety-nine-qq of the state finance law, may be expended for the purposes provided for in this section.

§ 19-1307. Indoor air quality index oversight committee.

1. Within one year of the effective date of this title, the department shall establish an indoor air quality index oversight committee.

2. The indoor air quality index oversight committee established under subdivision one of this section shall have the following functions, powers and duties including, but not limited to:

(a) to ensure compliance with the provisions of this title.

(b) to monitor the progress of the training programs established under this title.

(c) to provide incentives for building owners and managers who exceed the weatherization and energy efficiency standards.

§ 19-1309. Rules and regulations.

The commissioner shall promulgate rules and regulations in consultation with the commissioner of health to effectuate the requirements of this title.

§ 4. The executive law is amended by adding a new article 49-C to read as follows:

ARTICLE 49-C

OFFICE OF WORKFORCE DEVELOPMENT AND INDOOR AIR QUALITY MANAGEMENT TRAINING

Section 996. Definitions.

996-a. Office of workforce development and indoor air quality management training.

996-b. Community engagement and public oversight.

996-c. Utilization of other agency assistance.

996-d. Reports.

§ 996. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Office" shall mean the office of workforce development and indoor air quality management training established by this article.

2. "State agency" shall mean the state and any department, division, board, bureau, commission, or agency of the state or any political subdivision thereof.

§ 996-a. Office of workforce development and indoor air quality management training. 1. There is hereby created within the executive department the office of workforce development and indoor air quality management training consisting of a director which shall be appointed by the governor and such other personnel as necessary.

2. The office shall:

(a) be responsible for providing training and resources to individuals and businesses in the areas of workforce development and indoor air quality management.

(b) work in conjunction with the department of education, the department of labor, and the office of strategic workforce development to identify workforce needs and develop training programs that meet such needs.

(c) work in conjunction with the New York state energy research and development authority to promote health through energy efficiency and healthier buildings.

(d) work in consultation with the centers for disease control and prevention to develop and implement training programs related to indoor air quality management.

(e) work in conjunction with the New York independent system operator to promote energy efficiency and indoor air quality management.

(f) have the authority to procure contracts. Contracts procured by the office shall be exempt from the requirements of section one hundred three of the general municipal law.

§ 996-b. Community engagement and public oversight. The office shall maintain a website where a member of the public can leave a public comment on the office's activities related to workforce development and indoor air quality. The office shall also conduct hearings at least twice a year where the public can comment on the office's progress toward its goals. One such hearing shall occur in a city with a population of one million or more and another such hearing shall not occur in a city with a population of less than one million.

§ 996-c. Utilization of other agency assistance. All state agencies are hereby authorized and directed to provide assistance and available resources, as requested by the office, in order to effectuate the purposes of this article related to workforce development and indoor air quality.

§ 996-d. Reports. The office shall report on its progress, accomplishments, findings, conclusions, recommendations, and activities related to workforce development and indoor air quality to the governor and to the legislature annually on or before the thirty-first day of March of each year.

§ 5. The public service law is amended by adding a new section 28 to read as follows:

§ 28. Indoor air quality and continuous infectious microbial reduction certification training and procurement program. 1. The commission shall establish an indoor air quality and continuous infectious microbial reduction certification training and procurement program for local residents to provide indoor air quality and continuous infectious microbial reduction certification. Such program shall include certification under the federal environmental protection agency and follow curriculum standards established by the centers for disease control and prevention and the federal department of energy regarding weatherization and energy efficiency. Such program shall include, but not be limited to:

(a) partnerships with local vocational schools, community colleges and universities to provide training programs and apprenticeship and on-the-job training opportunities for local residents on indoor air quality and continuous infectious microbial reduction vocational skills and procurement.

(b) partnerships with local vocational schools, community colleges, and universities to provide training programs for renewable energy and

microgrid system design, installation, maintenance, and procurement for local residents.

(c) apprenticeship and on-the-job training opportunities for local residents to gain hands-on experience in indoor air quality and continuous infectious microbial reduction vocational skills and procurement.

2. The commission shall create an oversight committee to ensure compliance to this section and monitor the progress of the training and procurement program established under this section. Such oversight committee shall also provide incentives for building owners and managers who exceed the local training and procurement goals.

3. The commission shall, in order to provide minority- and women-owned business enterprises, minority group members and women the opportunity for meaningful participation in the training and procurement program established under this section, establish goals for participation in the training and procurement program by and procurement under such program from minority- and women-owned business enterprises, minority group members and women. For the purposes of this subdivision, "minority-owned business enterprise" shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are Black, Hispanic, Asian or American Indian, and such ownership interest is real, substantial and continuing and "women-owned business enterprise" shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent resident noncitizens who are women and such ownership interest is real, substantial and continuing.

4. Monies from the indoor air quality fund, established by section ninety-nine-qq of the state finance law, may be expended for the purposes provided for in this section, and shall include, but not be limited to, training and procurement programs for veterans, formerly incarcerated individuals, persons who recently received a high school diploma, single parents enrolled in the supplemental nutrition assistance program and/or receive cash benefits from a temporary assistance program under the federal temporary assistance for needy families.

5. The commission shall, no later than December thirty-first, two thousand twenty-three, report to the governor, the temporary president of the senate, and the speaker of the assembly on the progress of the training and procurement program established under this section. Such report shall include, but not be limited to:

(a) the number of local residents who have received training in renewable energy and indoor air quality vocational skills and procurement;

(b) the number of local residents who have received apprenticeship and on-the-job training opportunities in renewable energy and indoor air quality vocational skills and procurement;

(c) the number of renewable energy and microgrid systems that have been designed, installed, maintained and procured by local residents;

(d) the number of building owners and managers who have met or exceeded the local training and procurement goals;

(e) the number of minority- and women-owned business enterprises, minority group members and women who have participated in the training and procurement program; and

(f) the amount of monies expended from the indoor air quality fund for the purposes provided for in this section.

6. This section shall not preempt or supersede any law, rule or regulation relating to air quality or indoor air quality, including, but not limited to, the state energy law, the labor law or the public health law.

§ 6. The labor law is amended by adding a new article 19-e to read as follows:

ARTICLE 19-E

MINIMUM WAGE RATES FOR INDOOR AIR QUALITY WORKERS

Section 697-a. Definitions.
697-b. Certification to the commissioner.
697-c. Minimum wage rate for indoor air quality workers.
697-d. Employment requirements for indoor air quality workers.
697-e. Commissioner's powers of investigation.
697-f. Records of employers.
697-g. Penalties.
697-h. Civil action.
697-i. Regulations.
697-j. Severability clause.

§ 697-a. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Covered indoor air quality workers" means any person employed where at least one-half of the employee's time during any workweek is working in the following categories:

(a) mitigation of the health effects of indoor air pollution through improving HVAC systems, building systems and components, and energy conservation; and

(b) weatherization and energy efficiency to prevent hazardous air pollutants from infiltrating and contributing to poor indoor air quality.

2. "Livable wage" means a wage that is sufficient for a worker to afford basic necessities, including but not limited to housing, food, transportation, healthcare, and child care in the local area. This shall be determined by the department and reviewed annually.

3. "Local area" means the geographic area around a location which is part of the same labor market area and is within a reasonable distance for a person to travel to such location from their residence for employment.

§ 697-b. Certification to the commissioner. 1. No later than March thirty-first, two thousand twenty-four, and on March thirty-first of each year thereafter, each employer of a covered indoor air quality worker shall submit to the commissioner a sworn statement certifying the total number of such workers employed by such employer.

2. Each employer of an indoor air quality worker shall submit to the commissioner, in a form and manner prescribed by the commissioner, a sworn statement affirming that such employer will ensure, where applicable, that the indoor air quality workers it employs are paid at least the minimum wage required by section six hundred ninety-seven-c of this article.

3. Each employer of an indoor air quality worker shall submit to the commissioner, in a form and manner prescribed by the commissioner, a sworn statement affirming that such employer will ensure, where applicable, that the indoor air quality workers it employs are from the local area where work is being performed as required by section six hundred ninety-seven-d of this article.

§ 697-c. Minimum wage rate for indoor air quality workers. All covered employers shall ensure that every covered indoor air quality worker is

compensated at a rate that is no less than the livable wage. Nothing in this article shall alter or limit any employer's obligation to pay any otherwise applicable wage under article eight or nine of this chapter.

§ 697-d. Employment requirements for indoor air quality workers. At least fifty percent of covered indoor air quality workers employed by an employer shall reside within the local area of where the work is being performed.

§ 697-e. Commissioner's powers of investigation. The commissioner or his or her authorized representative shall have the power to:

1. investigate the compensation of covered indoor air quality workers in the state;

2. enter the place of business or employment of any employer for the purpose of:

(a) examining and inspecting any and all books, registers, payrolls, and other records that in any way relate to or have a bearing upon the compensation provided to, or the hours worked by any employees; and

(b) ascertaining whether the provisions of this article and the rules and regulations promulgated hereunder are being complied with; and

3. require from any employer full and correct statements and reports in writing, at such times as the commissioner may deem necessary, of the compensation provided to and the hours worked by such employer's employees.

§ 697-f. Records of employers. For every employee covered by this article, every employer shall establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the compensation provided, plus such other information as the commissioner deems material and necessary. For all covered indoor air quality workers who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law, rule, or regulation, the payroll records shall include the compensation provided and the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, the number of overtime hours worked and the cost of benefits and/or benefit supplements. On demand, the employer shall furnish to the commissioner or his or her duly authorized representative a sworn statement of the hours worked, and rate or rates of compensation, for each covered indoor air quality worker, plus such other information as the commissioner deems material and necessary. Every employer shall keep such records open to inspection by the commissioner or his or her duly authorized representative at any reasonable time. Every employer of a covered indoor air quality worker shall keep a digest and summary of this article, which shall be prepared by the commissioner, posted in a conspicuous place in his or her establishment and shall also keep posted such additional copies of said digest and summary as the commissioner prescribes. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge. Employers shall permit the commissioner or his or her duly authorized representative to question without interference any employee of such employer in a private location at the place of employment and during working hours in respect to the wages paid to and the hours worked by such employee or other employees.

§ 697-g. Penalties. 1. If the commissioner finds that any employer has violated any provision of this article or of a rule or regulation promulgated thereunder, the commissioner may, after an opportunity for a hearing, and by an order which shall describe particularly the nature of the violation, assess the employer a civil penalty of not more than ten

thousand dollars for the first such violation within six years, not more than twenty thousand dollars for a second violation within six years and not more than fifty thousand dollars for a third or subsequent violation within six years. Such penalty shall be paid to the commissioner for deposit in the treasury of the state. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping or other requirements.

2. Any order issued under subdivision one of this section shall be deemed a final order of the commissioner and not subject to review by any court or agency unless the employer files a petition with the industrial board of appeals for a review of the order, pursuant to section one hundred one of this chapter.

3. The civil penalty provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty provided for in this chapter.

4. Upon a showing by an employee organization, the commissioner may investigate by examining payroll records whether an employer withheld hours of work to employees for the purpose of reducing the employer's obligations under this article. If, after the opportunity for a hearing, the commissioner determines that an employer withheld hours of work to employees for the purpose of reducing the employer's obligations under this article, the commissioner may, in addition to any other penalty available, also require that the employer pay the standard benefits supplement rate to all of the employer's employees, regardless of the number of hours worked by the employees.

§ 697-h. Civil action. 1. On behalf of any employee paid less than the rate to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment, plus costs, and unless the employer proves a good faith basis to believe that its underpayment was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of underpayments found to be due the employee. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of underpayments found to be due the employee.

2. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article shall be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded.

3. In any civil action by the commissioner, the commissioner shall have the right to collect attorneys' fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

§ 697-i. Regulations. The commissioner may promulgate such regulations as he or she deems appropriate to carry out the purposes of this article and to safeguard minimum compensation standards.

§ 697-j. Severability clause. If any provision of this article, or any application of any provision of this article, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this article, or of any other application of any provision of this article, which can be given effect without that provision or application; and to that end, the provisions and applications of this article are severable.

§ 7. The state finance law is amended by adding a new section 99-qq to read as follows:

§ 99-qq. Indoor air quality fund. 1. There is hereby established in the joint custody of the comptroller, the commissioner of health, the president of the New York state energy research and development authority, and the commissioner of housing and community renewal a fund to be known as the indoor air quality fund.

2. Such fund shall consist of:

(a) all monetary grants received by the state under paragraph (z) of subdivision one of section two hundred one of the public health law, subdivision twenty-four of section eighteen hundred fifty-four of the public authorities law, and paragraph (q) of subdivision one of section fourteen of the public housing law;

(b) all monetary funding received by the state through coordination with local government, private sector, and non-profit organizations under paragraph (z) of subdivision one of section two hundred one of the public health law, subdivision twenty-four of section eighteen hundred fifty-four of the public authorities law, and paragraph (q) of subdivision one of section fourteen of the public housing law;

(c) all monetary gifts or bequests received by the state for the fund; and

(d) all monies appropriated, credited, or transferred thereto from any other fund or source pursuant to law.

3. Moneys of the fund shall be expended solely for the purposes of carrying out the provisions of title thirteen of article nineteen of the environmental conservation law and section twenty-eight of the public service law. Monies shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers approved by the commissioner of health, the president of the New York state energy research and development authority, and the commissioner of housing and community renewal. Any interest received by the comptroller on monies on deposit in the indoor air quality fund shall be retained in and become part of such fund.

4. On or before the first day of April each year, the commissioner of health, the president of the New York state energy research and development authority, and the commissioner of housing and community renewal shall submit a report to the governor, the temporary president of the senate and the speaker of the assembly outlining the funding sources and amounts secured for the fund and the expenses incurred by the fund. Such report shall also contain a plan outlining the strategies and actions to be taken to secure the necessary funding for the long-term sustainability of the fund.

5. The state shall make necessary appropriations to ensure the continuation of the fund.

§ 8. Subdivision 1 of section 201 of the public health law is amended by adding a new paragraph (z) to read as follows:

(z) identify and apply for federal grants and funding opportunities related to indoor air quality in regard to public health and coordinate with local government, private sector, and non-profit organizations to explore additional funding opportunities related to indoor air quality in regard to public health. All such grants, funding, and other monies received by the state due to actions taken by the department under this paragraph shall be deposited into the indoor air quality fund established by section ninety-nine-qq of the state finance law.

§ 9. Section 1854 of the public authorities law is amended by adding a new subdivision 24 to read as follows:

24. To identify and apply for federal grants and funding opportunities related to microgrids, energy efficiency and weatherization, and indoor air quality in regard to renewable energy and energy conservation and to coordinate with local government, private sector, and non-profit organizations to explore additional funding opportunities related to microgrids, energy efficiency and weatherization, and indoor air quality in regard to renewable energy and energy conservation. All such grants, funding, and other monies received by the state due to actions taken by the authority under this subdivision shall be deposited into the indoor air quality fund established by section ninety-nine-qq of the state finance law.

§ 10. Subdivision 1 of section 14 of the public housing law is amended by adding a new subdivision (q) to read as follows:

(q) identify and apply for federal grants and funding opportunities related to indoor air quality in regard to affordable housing and community development and coordinate with local government, private sector, and non-profit organizations to explore additional funding opportunities related to indoor air quality in regard to affordable housing and community development. All such grants, funding, and other monies received by the state due to actions taken by the commissioner under this subdivision shall be deposited into the indoor air quality fund established by section ninety-nine-qq of the state finance law.

§ 11. This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.