

3267

2013-2014 Regular Sessions

I N   S E N A T E

January 31, 2013

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Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public authorities law, the public service law, the labor law, the civil service law and the executive law, in relation to establishing a nuclear whistleblower access and assistance program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The legislature finds that safe operation of the publicly  
2 and privately owned nuclear-powered electric generating facilities with-  
3 in the state is a matter of paramount public concern. The legislature  
4 further finds that an essential component of any safety strategy is a  
5 program which assures that employees who have first-hand knowledge of  
6 potential safety problems can freely communicate their concerns without  
7 fear of retaliation. Although laws and regulations exist at both the  
8 state and federal level to protect whistleblowers, the legislature finds  
9 that the purpose served by such laws will be furthered if an affirmative  
10 program exists which encourages employees to come forward with safety-  
11 related concerns. The legislature finds that the state, as the owner of  
12 the power plants operated by the power authority of the state of New  
13 York, has an interest and obligation to ensure that such facilities are  
14 being managed in a way that provides the highest possible level of safe-  
15 ty. The legislature also finds that the state has an interest in  
16 protecting and an obligation to protect its citizens from the possible  
17 hazards of privately owned nuclear-powered electric generating facili-  
18 ties.

19     S 2. The public authorities law is amended by adding a new section  
20 1873-a to read as follows:

21     S 1873-A. NUCLEAR WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM. 1.  
22 "EMPLOYEES AT A NUCLEAR-POWERED ELECTRIC GENERATING FACILITY" MEANS  
23 THOSE PERSONS EMPLOYED AT PUBLICLY AND PRIVATELY OWNED NUCLEAR-POWERED

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

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1 ELECTRIC GENERATING FACILITIES, INCLUDING BUT NOT LIMITED TO: FULL-TIME  
2 AND PART-TIME EMPLOYEES, CONTRACTORS, THOSE EMPLOYEES ON PROBATION, AND  
3 TEMPORARY EMPLOYEES.

4 2. THE AUTHORITY, AFTER CONSULTATION WITH THE UNITED STATES NUCLEAR  
5 REGULATORY COMMISSION, THE CHAIR OF THE PUBLIC SERVICE COMMISSION, AND  
6 THE COMMISSIONER OF THE DEPARTMENT OF LABOR, SHALL ESTABLISH A NUCLEAR  
7 WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM.

8 3. THE NUCLEAR WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM SHALL  
9 INCLUDE, AT A MINIMUM, THE FOLLOWING PROVISIONS:

10 (A) THE AUTHORITY SHALL EVALUATE AND COMMENT ON WHISTLEBLOWER PROGRAMS  
11 PROPOSED BY OPERATORS OF NUCLEAR-POWERED ELECTRIC GENERATING FACILITIES  
12 PURSUANT TO SECTION ONE THOUSAND FIVE OF THIS CHAPTER AND SECTION  
13 SIXTY-FIVE OF THE PUBLIC SERVICE LAW;

14 (B) THE AUTHORITY SHALL ESTABLISH TOLL-FREE TELEPHONE AND FACSIMILE  
15 LINES AVAILABLE TO CONTRACTORS, ADVOCATES SHIELDING THE IDENTITY OF  
16 INSIDE WHISTLEBLOWERS, AND ALL PERSONS WITHIN THE STATE OF NEW YORK'S  
17 NUCLEAR INDUSTRY WHO HAVE KNOWLEDGE OF ISSUES THAT AFFECT PUBLIC HEALTH  
18 AND SAFETY. THE AUTHORITY SHALL OFFER:

19 (I) ADVICE REGARDING THE EMPLOYEE'S RIGHTS UNDER APPLICABLE STATE AND  
20 FEDERAL LAWS AND ADVICE AND OPTIONS AVAILABLE TO ALL PERSONS;

21 (II) AN OPPORTUNITY FOR CONTRACTORS, ADVOCATES SHIELDING THE IDENTITY  
22 OF INSIDE WHISTLEBLOWERS, AND ALL PERSONS WITHIN THE STATE OF NEW YORK'S  
23 NUCLEAR INDUSTRY TO IDENTIFY CONCERNS REGARDING ANY SAFETY ISSUE AT A  
24 NUCLEAR-POWERED ELECTRIC GENERATING FACILITY, INCLUDING BUT NOT LIMITED  
25 TO ANY VIOLATIONS OR POTENTIAL VIOLATIONS OF REGULATIONS OF THE NUCLEAR  
26 REGULATORY COMMISSION;

27 (III) THE OPTION OF CONTACTING A NEUTRAL CONSULTANT FOR THE PURPOSE OF  
28 SEEKING UNBIASED, NON-GOVERNMENTAL INFORMATION TO HELP RESOLVE SAFETY  
29 CONCERNS;

30 (C) ANY COMMUNICATIONS BETWEEN AN EMPLOYEE AND THE AUTHORITY PURSUANT  
31 TO THIS SECTION SHALL BE HELD STRICTLY CONFIDENTIAL BY THE AUTHORITY,  
32 UNLESS THE EMPLOYEE SPECIFICALLY WAIVES IN WRITING THE RIGHT TO CONFIDENTIALITY (THE PERSON ALLEGING A SAFETY VIOLATION IS NOT REQUIRED TO IDENTIFY HIMSELF/HERSELF) TO ANY ENTITY, INCLUDING THE NUCLEAR REGULATORY COMMISSION;

36 (D) THE AUTHORITY SHALL PERFORM A PRELIMINARY EVALUATION OF ANY SAFETY  
37 CONCERN IDENTIFIED BY A CALLER WITHIN SEVENTY-TWO HOURS AND GIVE THE  
38 CALLER EVALUATION RIGHTS IF HE OR SHE SO DESIRES AND CONDUCT FOLLOW-UP  
39 REPORTS EVERY TWO WEEKS THEREAFTER FOR AN APPROPRIATE LENGTH OF TIME TO  
40 BE DETERMINED BY THE AUTHORITY;

41 (E) REGARDING ANY CONCERN FOR WHICH THE AUTHORITY LACKS SUFFICIENT  
42 EXPERTISE TO REACH A CONCLUSION OR WHICH, IN THE AUTHORITY'S JUDGMENT,  
43 REPRESENTS A SIGNIFICANT PUBLIC HEALTH OR SAFETY CONCERN, THE AUTHORITY  
44 SHALL CONTACT THE UNITED STATES NUCLEAR REGULATORY COMMISSION, SHALL  
45 COMMUNICATE SUCH CONCERN, AND SHALL MAINTAIN COMMUNICATIONS WITH THE  
46 COMMISSION AND THE CALLER, WHENEVER POSSIBLE, REGARDING ANY INVESTIGATION OF SUCH CONCERN; AND

48 (F) THE AUTHORITY SHALL CONSULT WITH THE DEPARTMENT OF LAW REGARDING  
49 ANY EMPLOYEE AT A NUCLEAR-POWERED ELECTRIC GENERATING FACILITY WHO MAY  
50 HAVE RECOURSE TO AN ACTION PURSUANT TO SECTION SEVEN HUNDRED FORTY OF  
51 THE LABOR LAW OR SECTION SEVENTY-FIVE-B OF THE CIVIL SERVICE LAW.

52 4. WHETHER OR NOT THE AUTHORITY PROCEEDS, THE WHISTLEBLOWER, IF IDENTIFIED OR THE ADVOCATE WHO IS SHIELDING THE IDENTITY OF AN INSIDE WHISTLEBLOWER, SHALL HAVE STANDING TO LITIGATE AND SHALL BE ENTITLED TO EXPEDITED PROCEEDINGS IN THE COURTS OF THIS STATE WITHOUT REGARD TO HAVING  
56 EXHAUSTED ADMINISTRATIVE REMEDIES.

1 S 3. Section 1005 of the public authorities law is amended by adding  
2 a new subdivision 24 to read as follows:

3 24. AT EACH NUCLEAR-POWERED ELECTRIC GENERATING FACILITY OWNED OR  
4 OPERATED BY THE AUTHORITY, THE AUTHORITY SHALL ESTABLISH AND IMPLEMENT A  
5 WHISTLEBLOWER PROGRAM. WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS  
6 SUBDIVISION, THE AUTHORITY SHALL SUBMIT TO THE NEW YORK STATE ENERGY  
7 RESEARCH AND DEVELOPMENT AUTHORITY A PROPOSED PLAN FOR A PROGRAM TO  
8 IMPLEMENT THE PURPOSES OF THIS SUBDIVISION. SUCH PROGRAM SHALL INCLUDE,  
9 AT A MINIMUM:

10 (A) OPPORTUNITY FOR ACCESS TO SENIOR MANAGEMENT FOR PURPOSES OF COMMU-  
11 NICATING SAFETY CONCERNS THAT AFFECT PUBLIC HEALTH AND SAFETY;

12 (B) EDUCATION REGARDING EMPLOYEE RIGHTS AND PROTECTIONS PURSUANT TO  
13 APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS, INCLUDING, TO THE  
14 EXTENT PERMITTED BY THE NUCLEAR REGULATORY COMMISSION, DISPLAY AT PROMI-  
15 NENT LOCATIONS WITHIN THE FACILITY OF THE TOLL-FREE TELEPHONE NUMBER  
16 WHICH PROVIDES ACCESS TO THE NEW YORK STATE ENERGY RESEARCH AND DEVELOP-  
17 MENT AUTHORITY'S NUCLEAR WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM  
18 ESTABLISHED PURSUANT TO SECTION EIGHTEEN HUNDRED SEVENTY-THREE-A OF THIS  
19 CHAPTER.

20 S 4. Section 65 of the public service law is amended by adding a new  
21 subdivision 14 to read as follows:

22 14. AT EACH NUCLEAR-POWERED ELECTRIC GENERATING FACILITY OWNED OR  
23 OPERATED BY AN ELECTRIC CORPORATION, THE CORPORATION SHALL ESTABLISH AND  
24 IMPLEMENT A WHISTLEBLOWER PROGRAM. WITHIN SIX MONTHS OF THE EFFECTIVE  
25 DATE OF THIS SUBDIVISION, THE CORPORATION SHALL SUBMIT TO THE NEW YORK  
26 STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY A PROPOSED PLAN FOR A  
27 PROGRAM TO IMPLEMENT THE PURPOSES OF THIS SUBDIVISION. SUCH PROGRAM  
28 SHALL INCLUDE, AT A MINIMUM:

29 (A) OPPORTUNITY FOR ACCESS TO SENIOR MANAGEMENT FOR PURPOSES OF COMMU-  
30 NICATING SAFETY CONCERNS;

31 (B) EDUCATION REGARDING EMPLOYEE RIGHTS AND PROTECTIONS PURSUANT TO  
32 APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS, INCLUDING, TO THE  
33 EXTENT PERMITTED BY THE NUCLEAR REGULATORY COMMISSION, DISPLAY AT PROMI-  
34 NENT LOCATIONS WITHIN THE FACILITY OF THE TOLL-FREE TELEPHONE NUMBER  
35 WHICH PROVIDES ACCESS TO THE NEW YORK STATE ENERGY RESEARCH AND DEVELOP-  
36 MENT AUTHORITY'S NUCLEAR WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM.

37 S 5. Paragraph (a) of subdivision 2 of section 740 of the labor law,  
38 as amended by chapter 442 of the laws of 2006, is amended to read as  
39 follows:

40 (a) discloses, or threatens to disclose to a supervisor or to a public  
41 body an activity, policy or practice of the employer that is in  
42 violation of law, rule or regulation which violation creates and  
43 presents a substantial and specific danger to the public health or safe-  
44 ty, or which constitutes health care fraud, OR, IN THE CASE OF AN  
45 EMPLOYEE AT A NUCLEAR-POWERED ELECTRIC GENERATING FACILITY, DISCLOSES OR  
46 THREATENS TO DISCLOSE ANY PUBLIC HEALTH OR SAFETY CONCERN, REGARDLESS OF  
47 WHETHER OR NOT SUCH CONCERN RELATES TO A VIOLATION OF A LAW, RULE, OR  
48 REGULATION;

49 S 6. Subdivision 3 of section 740 of the labor law is amended by  
50 adding a new undesignated paragraph to read as follows:

51 THIS SUBDIVISION SHALL NOT APPLY TO ANY DISCLOSURE MADE BY AN EMPLOYEE  
52 AT A NUCLEAR-POWERED ELECTRIC GENERATING FACILITY, AS DEFINED PURSUANT  
53 TO SECTION EIGHTEEN HUNDRED SEVENTY-THREE-A OF THE PUBLIC AUTHORITIES  
54 LAW, WHO BELIEVES IN GOOD-FAITH THAT A DISCLOSURE TO A SUPERVISOR WOULD  
55 BE INCONSISTENT WITH THE FEDERAL OBSTRUCTION OF JUSTICE LAWS CODIFIED AT  
56 18 U.S.C. 1512 OR THE ATOMIC ENERGY ACT/ENERGY REORGANIZATION ACT.

1 S 7. Paragraph (c) of subdivision 1 of section 75-b of the civil  
2 service law, as added by chapter 660 of the laws of 1984, is amended to  
3 read as follows:

4 (c) "Governmental body" shall mean (i) an officer, employee, agency,  
5 department, division, bureau, board, commission, council, authority or  
6 other body of a public employer, (ii) employee, committee, member, or  
7 commission of the legislative branch of government, (iii) a represen-  
8 tative, member or employee of a legislative body of a county, town,  
9 village or any other political subdivision or civil division of the  
10 state, (iv) a law enforcement agency or any member or employee of a law  
11 enforcement agency, [or] (v) the judiciary or any employee of the judi-  
12 ciary, (VI) EMPLOYEES AT A NUCLEAR-POWERED ELECTRIC GENERATING FACILITY,  
13 OR (VII) THE UNITED STATES NUCLEAR REGULATORY COMMISSION.

14 S 8. Paragraph (a) of subdivision 2 of section 75-b of the civil  
15 service law, as amended by chapter 899 of the laws of 1986, is amended  
16 to read as follows:

17 (a) A public employer shall not dismiss or take other disciplinary or  
18 other adverse personnel action against a public employee regarding the  
19 employee's employment because the employee discloses to a governmental  
20 body information: (i) regarding a violation of a law, rule or regulation  
21 which violation creates and presents a substantial and specific danger  
22 to the public health or safety; [or] (ii) which the employee reasonably  
23 believes to be true and reasonably believes constitutes an improper  
24 governmental action; OR (III) FOR AN EMPLOYEE AT A NUCLEAR-POWERED ELEC-  
25 TRIC GENERATING FACILITY, AS DEFINED PURSUANT TO SECTION EIGHTEEN  
26 HUNDRED SEVENTY-THREE-A OF THE PUBLIC AUTHORITIES LAW, WHICH RELATES TO  
27 A PUBLIC HEALTH OR SAFETY CONCERN, REGARDLESS OF WHETHER OR NOT SUCH  
28 CONCERN RELATES TO A VIOLATION OF LAW, RULE, OR REGULATION. "Improper  
29 governmental action" shall mean any action by a public employer or  
30 employee, or an agent of such employer or employee, which is undertaken  
31 in the performance of such agent's official duties, whether or not such  
32 action is within the scope of his employment, and which is in violation  
33 of any federal, state or local law, rule or regulation.

34 S 9. Paragraph (b) of subdivision 2 of section 75-b of the civil  
35 service law, as added by chapter 660 of the laws of 1984, is amended to  
36 read as follows:

37 (b) Prior to disclosing information pursuant to paragraph (a) of this  
38 subdivision, an employee shall have made a good faith effort to provide  
39 the appointing authority or his or her designee the information to be  
40 disclosed and shall provide the appointing authority or designee a  
41 reasonable time to take appropriate action unless there is imminent and  
42 serious danger to public health or safety. For the purposes of this  
43 subdivision, an employee who acts pursuant to this paragraph shall be  
44 deemed to have disclosed information to a governmental body under para-  
45 graph (a) of this subdivision. THIS PARAGRAPH SHALL NOT APPLY TO ANY  
46 DISCLOSURE MADE BY AN EMPLOYEE AT A NUCLEAR-POWERED ELECTRIC GENERATING  
47 FACILITY, AS DEFINED PURSUANT TO SECTION EIGHTEEN HUNDRED  
48 SEVENTY-THREE-A OF THE PUBLIC AUTHORITIES LAW.

49 S 10. Section 63 of the executive law is amended by adding a new  
50 subdivision 16 to read as follows:

51 16. BRING, UPON THE RECOMMENDATION OF THE NEW YORK STATE ENERGY  
52 RESEARCH AND DEVELOPMENT AUTHORITY, ACTIONS PURSUANT TO SECTION SEVEN  
53 HUNDRED FORTY OF THE LABOR LAW AND SECTION SEVENTY-FIVE-B OF THE CIVIL  
54 SERVICE LAW ON BEHALF OF EMPLOYEES AT NUCLEAR-POWERED ELECTRIC GENERAT-  
55 ING FACILITIES, AS DEFINED PURSUANT TO SECTION EIGHTEEN HUNDRED SEVEN-  
56 TY-THREE-A OF THE PUBLIC AUTHORITIES LAW.

1      S 11. This act shall take effect immediately.