

S T A T E O F N E W Y O R K

5200--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. BRODSKY, GALEF -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 to read as follows:

21 S 1873. 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.

LBD06962-02-9

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
55 EXHAUSTED ADMINISTRATIVE REMEDIES.

1 S 3. Section 1005 of the public authorities law is amended by adding
2 a new subdivision 16 to read as follows:

3 16. 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 OF THIS
19 CHAPTER.

20 S 4. Section 65 of the public service law is amended by adding a new
21 subdivision 12 to read as follows:

22 12. 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 OF THE PUBLIC AUTHORITIES LAW,
54 WHO BELIEVES IN GOOD-FAITH THAT A DISCLOSURE TO A SUPERVISOR WOULD BE
55 INCONSISTENT WITH THE FEDERAL OBSTRUCTION OF JUSTICE LAWS CODIFIED AT 18
56 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 OF THE PUBLIC AUTHORITIES LAW, WHICH RELATES TO A
27 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 SEVENTY-THREE
48 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 OF THE PUBLIC AUTHORITIES LAW.

1 S 11. This act shall take effect immediately.