

S. 6136

A. 8957

S E N A T E - A S S E M B L Y

(PREFILED)

January 4, 2012

IN SENATE -- Introduced by Sens. LAVALLE, FLANAGAN, FUSCHILLO, HANNON, JOHNSON, MARCELLINO, MARTINS, SKELOS, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

IN ASSEMBLY -- Introduced by M. of A. SWEENEY, WEISENBERG, LAVINE, SCHIMEL, ENGLEBRIGHT, THIELE, MURRAY, RAIA, CONTE, SALADINO, McKEVITT, McDONOUGH, MONTESANO -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to the department of public service; to amend the public authorities law, in relation to the Long Island power authority; to amend the executive law, in relation to the department of state; and to repeal a chapter of the laws of 2011 amending the public service law relating to the Long Island power authority, as proposed in legislative bill numbers S. 2581 and A. 3614

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

1 Section 1. This act shall be known and may be cited as the "Long
2 Island power authority oversight and accountability act".
3 S 2. Section 3 of the public service law, as amended by chapter 155 of
4 the laws of 1970, is amended to read as follows:
5 S 3. Department of public service. 1. There shall be in the state
6 government a department of public service. The chairman of the public
7 service commission shall be the chief executive officer of the depart-
8 ment. He OR SHE shall appoint and shall have the power to remove,
9 subject to the provisions of the civil service law, all officers,
10 clerks, inspectors, experts and employees of the department, and to
11 approve all contracts for special service. The chairman shall designate
12 one of the commissioners in the department or an officer of the depart-
13 ment to act as deputy chairman during the absence or disability of the
14 chairman and during such times such deputy chairman shall possess all
15 the powers of the chairman as chief executive officer of the department.

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

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1 2. THE DEPARTMENT SHALL, UPON NOTIFICATION TO THE LONG ISLAND POWER
2 AUTHORITY, UNDERTAKE A COMPREHENSIVE AND REGULAR MANAGEMENT AND OPER-
3 ATIONS AUDIT OF SAID AUTHORITY PURSUANT TO SUBDIVISION (BB) OF SECTION
4 ONE THOUSAND TWENTY-F OF THE PUBLIC AUTHORITIES LAW. THE DEPARTMENT
5 SHALL HAVE DISCRETION TO HAVE SUCH AN AUDIT PERFORMED BY ITS STAFF, OR
6 BY AN INDEPENDENT CONTRACTOR. IN EVERY CASE IN WHICH AN AUDIT IS
7 REQUIRED PURSUANT TO SUBDIVISION (BB) OF SECTION ONE THOUSAND TWENTY-F
8 OF THE PUBLIC AUTHORITIES LAW PERFORMED BY AN INDEPENDENT AUDITOR, THE
9 DEPARTMENT SHALL HAVE THE AUTHORITY TO SELECT THE AUDITOR, AND TO
10 REQUIRE THE LONG ISLAND POWER AUTHORITY TO ENTER INTO A CONTRACT WITH
11 THE AUDITOR THAT IS CONSISTENT WITH THE CONTRACTING-RELATED REQUIREMENTS
12 SPECIFIED IN SUBDIVISION NINETEEN OF SECTION SIXTY-SIX OF THIS CHAPTER
13 AND THE REQUIREMENTS OF SUBDIVISION (BB) OF SECTION ONE THOUSAND TWEN-
14 TY-F OF THE PUBLIC AUTHORITIES LAW. SUCH CONTRACT SHALL PROVIDE FURTHER
15 THAT THE AUDITOR SHALL WORK FOR AND UNDER THE DIRECTION OF THE DEPART-
16 MENT ACCORDING TO SUCH TERMS AS THE DEPARTMENT MAY DETERMINE ARE NECES-
17 SARY AND REASONABLE.

18 S 3. Section 1020-f of the public authorities law, as added by chapter
19 517 of the laws of 1986, is amended by adding a new subdivision (bb) to
20 read as follows:

21 (BB) COMPREHENSIVE AND REGULAR MANAGEMENT AND OPERATIONS AUDITS. 1.
22 THE AUTHORITY SHALL COOPERATE IN THE UNDERTAKING AND COMPLETION OF A
23 REGULAR AND COMPREHENSIVE MANAGEMENT AND OPERATIONS AUDIT CONDUCTED
24 PURSUANT TO THE REQUIREMENTS OF THIS SUBDIVISION AND SUBDIVISION TWO OF
25 SECTION THREE OF THE PUBLIC SERVICE LAW. SUCH AUDIT SHALL REVIEW AND
26 EVALUATE THE AUTHORITY'S OVERALL OPERATIONS AND MANAGEMENT, INCLUDING
27 THE AUTHORITY'S OPERATIONS AND MANAGEMENT IN THE CONTEXT OF ITS DUTY TO
28 SET RATES AT THE LOWEST LEVEL CONSISTENT WITH STANDARDS AND PROCEDURES
29 PROVIDED IN SUBDIVISION (U) OF THIS SECTION, AND INCLUDE, BUT NOT BE
30 LIMITED TO: (I) THE AUTHORITY'S CONSTRUCTION AND CAPITAL PROGRAM PLAN-
31 NING IN RELATION TO THE NEEDS OF ITS CUSTOMERS FOR RELIABLE SERVICE;
32 (II) THE OVERALL EFFICIENCY OF THE AUTHORITY'S OPERATIONS; (III) THE
33 MANNER IN WHICH THE AUTHORITY IS MEETING ITS DEBT SERVICE OBLIGATIONS;
34 (IV) THE AUTHORITY'S FUEL AND PURCHASED POWER COST ADJUSTMENT CLAUSE AND
35 RECOVERY OF COSTS ASSOCIATED WITH SUCH CLAUSE; (V) THE AUTHORITY'S ANNU-
36 AL BUDGETING PROCEDURES AND PROCESS; AND (VI) THE AUTHORITY'S COMPLIANCE
37 WITH DEBT COVENANTS.

38 2. THE DEPARTMENT OF PUBLIC SERVICE SHALL NOTIFY THE AUTHORITY THAT
39 SAID DEPARTMENT IS IN THE PROCESS OF INITIATING A COMPREHENSIVE MANAGE-
40 MENT AND OPERATIONS AUDIT AS DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVI-
41 SION IN A MANNER THAT ENSURES THE TIMELINESS OF SUCH AUDIT, AND IN
42 ACCORDANCE WITH THE FOLLOWING TIMEFRAME: THE FIRST COMPREHENSIVE MANAGE-
43 MENT AND OPERATIONS AUDIT SHALL BE INITIATED AS OF THE EFFECTIVE DATE OF
44 THIS SUBDIVISION AND UNDERTAKEN IN A MANNER AND TO AN EXTENT THAT IS
45 PRACTICABLE IN THE CONTEXT OF THE AUTHORITY'S TRANSITION TO A NEW
46 MANAGEMENT SERVICE STRUCTURE; THE SECOND COMPREHENSIVE MANAGEMENT AND
47 OPERATIONS AUDIT SHALL BE INITIATED NO LATER THAN DECEMBER FIFTEENTH,
48 TWO THOUSAND FIFTEEN; AND ALL ADDITIONAL COMPREHENSIVE MANAGEMENT AND
49 OPERATIONS AUDITS SHALL BE INITIATED AT LEAST ONCE EVERY FIVE YEARS
50 THEREAFTER. WITHIN A REASONABLE TIME AFTER SUCH NOTIFICATION TO THE
51 AUTHORITY, SAID DEPARTMENT OR THE INDEPENDENT AUDITOR RETAINED BY THE
52 AUTHORITY TO UNDERTAKE SUCH AUDIT SHALL HOLD PUBLIC STATEMENT HEARINGS,
53 WITH PROPER NOTICE, IN BOTH NASSAU AND SUFFOLK COUNTIES FOR THE PURPOSE
54 OF RECEIVING BOTH ORAL AND WRITTEN COMMENTS FROM THE PUBLIC ON MATTERS
55 RELATED TO SUCH AUDIT AS DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION.

1 3. EACH SUCH AUDIT SHALL BE COMPLETED WITHIN EIGHTEEN MONTHS OF INITI-
2 ATION ABSENT AN EXTENSION FOR GOOD CAUSE SHOWN BY THE DEPARTMENT OF
3 PUBLIC SERVICE OR THE INDEPENDENT AUDITOR UNDER CONTRACT WITH THE
4 AUTHORITY WITH NOTICE OF SUCH EXTENSION TO THE GOVERNOR, THE TEMPORARY
5 PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE CHAIRS OF
6 THE AUTHORITY AND THE DEPARTMENT OF PUBLIC SERVICE. SUCH AUDIT SHALL BE
7 PROVIDED TO THE BOARD OF THE AUTHORITY IMMEDIATELY UPON ITS COMPLETION.
8 THE DEPARTMENT OF PUBLIC SERVICE SHALL PROVIDE NOTICE OF COMPLETION OF
9 SUCH AUDIT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE
10 SPEAKER OF THE ASSEMBLY, AND THE MINORITY LEADERS OF THE SENATE AND
11 ASSEMBLY, AND THE AUTHORITY, UPON RECEIPT OF SUCH AUDIT, SHALL POST A
12 COPY OF SUCH AUDIT, INCLUDING FINDINGS AND RECOMMENDATIONS, ON ITS
13 WEBSITE. UNLESS THE BOARD OF THE AUTHORITY MAKES A PRELIMINARY DETERMI-
14 NATION THAT ANY PARTICULAR FINDING OR RECOMMENDATION CONTAINED IN SUCH
15 AUDIT IS INCONSISTENT WITH THE AUTHORITY'S SOUND FISCAL OPERATING PRAC-
16 TICES, ANY EXISTING CONTRACTUAL OR OPERATING OBLIGATION, OR THE
17 PROVISION FOR SAFE AND ADEQUATE SERVICE, THE BOARD SHALL IMPLEMENT SUCH
18 FINDINGS AND RECOMMENDATIONS IN ACCORDANCE WITH THE TIMEFRAME SPECIFIED
19 UNDER SUCH AUDIT.

20 4. THE BOARD OF THE AUTHORITY SHALL MAKE ANY PRELIMINARY DETERMINATION
21 OF INCONSISTENCY WITH RESPECT TO ANY SUCH FINDING OR RECOMMENDATION
22 WITHIN THIRTY DAYS OF RECEIPT OF THE AUDIT, WITH NOTICE AND THE BASIS OF
23 SUCH DETERMINATION BEING PROVIDED TO THE DEPARTMENT OF PUBLIC SERVICE.
24 SUCH NOTICE AND BASIS SHALL BE POSTED CONTEMPORANEOUSLY ON THE AUTHORI-
25 TY'S WEBSITE AND THE BOARD SHALL, WITHIN THIRTY DAYS OF SUCH POSTING AND
26 WITH DUE ADVANCE NOTICE TO THE PUBLIC, HOLD A PUBLIC HEARING WITH
27 RESPECT TO ITS PRELIMINARY DETERMINATION OF INCONSISTENCY. AT SUCH HEAR-
28 ING THE DEPARTMENT OF PUBLIC SERVICE OR THE INDEPENDENT AUDITOR RESPON-
29 SIBLE FOR UNDERTAKING SUCH AUDIT SHALL PRESENT THE BASIS FOR ITS FIND-
30 INGS AND RECOMMENDATIONS AND THE BOARD SHALL PRESENT THE BASIS FOR ITS
31 DETERMINATION OF INCONSISTENCY. THE AUTHORITY AND AUDITOR MAY DURING THE
32 TIME PERIOD PRIOR TO SUCH PUBLIC HEARING REACH AGREEMENT ON DISPUTED
33 ISSUES. WITHIN THIRTY DAYS AFTER SUCH PUBLIC HEARING, THE BOARD OF THE
34 AUTHORITY SHALL ANNOUNCE ITS FINAL DETERMINATION AND PLANNED IMPLEMENTA-
35 TIONS WITH RESPECT TO ANY SUCH FINDINGS AND/OR RECOMMENDATIONS. THE
36 BOARD'S FINAL DETERMINATION OF INCONSISTENCY SHALL BE SUBJECT TO ANY
37 APPLICABLE JUDICIAL REVIEW PROCEEDING, INCLUDING REVIEW AVAILABLE UNDER
38 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

39 S 4. Paragraph (b) of subdivision 4 of section 94-a of the executive
40 law, as added by section 21 of part A of chapter 62 of the laws of 2011,
41 is amended to read as follows:

42 (b) The utility intervention unit shall have the power and duty to:

43 (i) on behalf of the secretary, initiate, intervene in, or participate
44 in any proceedings before the public service commission, to the extent
45 authorized by sections twenty-four-a, seventy-one, eighty-four or nine-
46 ty-six of the public service law or any other applicable provision of
47 law, where he or she deems such initiation, intervention or partic-
48 ipation to be necessary or appropriate; [and]

49 (ii) represent the interests of consumers of the state before federal,
50 state and local administrative and regulatory agencies engaged in the
51 regulation of energy services[.]; AND

52 (III) ACCEPT AND INVESTIGATE COMPLAINTS OF ANY KIND FROM LONG ISLAND
53 POWER AUTHORITY CONSUMERS, ATTEMPT TO MEDIATE SUCH COMPLAINTS WHERE
54 APPROPRIATE DIRECTLY WITH SUCH AUTHORITY AND REFER COMPLAINTS TO THE
55 APPROPRIATE STATE OR LOCAL AGENCY AUTHORIZED BY LAW TO TAKE ACTION WITH
56 RESPECT TO SUCH COMPLAINTS.

1 S 5. A chapter of the laws of 2011 amending the public service law
2 relating to the Long Island power authority, as proposed in legislative
3 bill numbers S. 2581 and A. 3614, is REPEALED.

4 S 6. This act shall take effect immediately; provided that section
5 five of this act shall take effect on the same date as a chapter of the
6 laws of 2011 amending the public service law relating to the Long Island
7 power authority, as proposed in legislative bill numbers S. 2581 and A.
8 3614, takes effect.