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

3267--A

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- 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:

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

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

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

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S 1873-A. NUCLEAR WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM. 1. "EMPLOYEES AT A NUCLEAR-POWERED ELECTRIC GENERATING FACILITY" MEANS THOSE PERSONS EMPLOYED AT PUBLICLY AND PRIVATELY OWNED NUCLEAR-POWERED ELECTRIC GENERATING FACILITIES, INCLUDING BUT NOT LIMITED TO: FULL-TIME AND PART-TIME EMPLOYEES, CONTRACTORS, THOSE EMPLOYEES ON PROBATION, AND TEMPORARY EMPLOYEES.

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

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

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

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

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

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

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

(C) ANY COMMUNICATIONS BETWEEN AN EMPLOYEE AND THE AUTHORITY PURSUANT TO THIS SECTION SHALL BE HELD STRICTLY CONFIDENTIAL BY THE AUTHORITY, 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;

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

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

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

4. WHETHER OR NOT THE AUTHORITY PROCEEDS, THE WHISTLEBLOWER, IF IDENTIFIED OR THE ADVOCATE WHO IS SHIELDING THE IDENTITY OF AN INSIDE WHIST-

LEBLOWER, SHALL HAVE STANDING TO LITIGATE AND SHALL BE ENTITLED TO EXPEDITED PROCEEDINGS IN THE COURTS OF THIS STATE WITHOUT REGARD TO HAVING EXHAUSTED ADMINISTRATIVE REMEDIES.

S 3. Section 1005 of the public authorities law is amended by adding a new subdivision 25 to read as follows:

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

(A) OPPORTUNITY FOR ACCESS TO SENIOR MANAGEMENT FOR PURPOSES OF COMMUNICATING SAFETY CONCERNS THAT AFFECT PUBLIC HEALTH AND SAFETY;

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

S 4. Section 65 of the public service law is amended by adding a new subdivision 16 to read as follows:

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

(A) OPPORTUNITY FOR ACCESS TO SENIOR MANAGEMENT FOR PURPOSES OF COMMUNICATING SAFETY CONCERNS;

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

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

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

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

THIS SUBDIVISION SHALL NOT APPLY TO ANY DISCLOSURE MADE BY AN EMPLOYEE AT A NUCLEAR-POWERED ELECTRIC GENERATING FACILITY, AS DEFINED PURSUANT TO SECTION EIGHTEEN HUNDRED SEVENTY-THREE-A OF THE PUBLIC AUTHORITIES

LAW, WHO BELIEVES IN GOOD-FAITH THAT A DISCLOSURE TO A SUPERVISOR WOULD BE INCONSISTENT WITH THE FEDERAL OBSTRUCTION OF JUSTICE LAWS CODIFIED AT 18 U.S.C. 1512 OR THE ATOMIC ENERGY ACT/ENERGY REORGANIZATION ACT.

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

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

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

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

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

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

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

16. BRING, UPON THE RECOMMENDATION OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, ACTIONS PURSUANT TO SECTION SEVEN HUNDRED FORTY OF THE LABOR LAW AND SECTION SEVENTY-FIVE-B OF THE CIVIL

SERVICE LAW ON BEHALF OF EMPLOYEES AT NUCLEAR-POWERED ELECTRIC GENERATING FACILITIES, AS DEFINED PURSUANT TO SECTION EIGHTEEN HUNDRED SEVENTY-THREE-A OF THE PUBLIC AUTHORITIES LAW.

S 11. This act shall take effect immediately.