

# STATE OF NEW YORK

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1276--A

2021-2022 Regular Sessions

## IN SENATE

January 8, 2021

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Introduced by Sens. KRUEGER, LIU, SERRANO -- 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:

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

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

LBD04382-03-2

1     § 1873-a. Nuclear whistleblower access and assistance program. 1.  
2     "Employees at a nuclear-powered electric generating facility" means  
3     those persons employed at publicly and privately owned nuclear-powered  
4     electric generating facilities, including but not limited to: full-time  
5     and part-time employees, contractors, those employees on probation, and  
6     temporary employees.

7     2. The authority, after consultation with the United States nuclear  
8     regulatory commission, the chair of the public service commission, and  
9     the commissioner of the department of labor, shall establish a nuclear  
10    whistleblower access and assistance program.

11    3. The nuclear whistleblower access and assistance program shall  
12    include, at a minimum, the following provisions:

13    (a) the authority shall evaluate and comment on whistleblower programs  
14    proposed by operators of nuclear-powered electric generating facilities  
15    pursuant to section one thousand five of this chapter and section  
16    sixty-five of the public service law;

17    (b) the authority shall establish toll-free telephone and facsimile  
18    lines available to contractors, advocates shielding the identity of  
19    inside whistleblowers, and all persons within the state of New York's  
20    nuclear industry who have knowledge of issues that affect public health  
21    and safety. The authority shall offer:

22    (i) advice regarding the employee's rights under applicable state and  
23    federal laws and advice and options available to all persons;

24    (ii) an opportunity for contractors, advocates shielding the identity  
25    of inside whistleblowers, and all persons within the state of New York's  
26    nuclear industry to identify concerns regarding any safety issue at a  
27    nuclear-powered electric generating facility, including but not limited  
28    to any violations or potential violations of regulations of the nuclear  
29    regulatory commission;

30    (iii) the option of contacting a neutral consultant for the purpose of  
31    seeking unbiased, non-governmental information to help resolve safety  
32    concerns;

33    (c) any communications between an employee and the authority pursuant  
34    to this section shall be held strictly confidential by the authority,  
35    unless the employee specifically waives in writing the right to confi-  
36    dentiality (the person alleging a safety violation is not required to  
37    identify himself/herself) to any entity, including the nuclear regulato-  
38    ry commission;

39    (d) the authority shall perform a preliminary evaluation of any safety  
40    concern identified by a caller within seventy-two hours and give the  
41    caller evaluation rights if he or she so desires and conduct follow-up  
42    reports every two weeks thereafter for an appropriate length of time to  
43    be determined by the authority;

44    (e) regarding any concern for which the authority lacks sufficient  
45    expertise to reach a conclusion or which, in the authority's judgment,  
46    represents a significant public health or safety concern, the authority  
47    shall contact the United States nuclear regulatory commission, shall  
48    communicate such concern, and shall maintain communications with the  
49    commission and the caller, whenever possible, regarding any investi-  
50    gation of such concern; and

51    (f) the authority shall consult with the department of law regarding  
52    any employee at a nuclear-powered electric generating facility who may  
53    have recourse to an action pursuant to section seven hundred forty of  
54    the labor law or section seventy-five-b of the civil service law.

55    4. Whether or not the authority proceeds, the whistleblower, if iden-  
56    tified or the advocate who is shielding the identity of an inside whist-

1 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.

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4 § 3. Section 1005 of the public authorities law is amended by adding a new subdivision 28 to read as follows:

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6 28. 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:

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13 (a) opportunity for access to senior management for purposes of communicating safety concerns that affect public health and safety;

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15 (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.

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23 § 4. Section 65 of the public service law is amended by adding a new subdivision 17 to read as follows:

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25 17. 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:

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32 (a) opportunity for access to senior management for purposes of communicating safety concerns;

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34 (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.

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40 § 5. Paragraph (a) of subdivision 2 of section 740 of the labor law, as amended by chapter 522 of the laws of 2021, is amended to read as follows:

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43 (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety 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;

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

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53 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

1 be inconsistent with the federal obstruction of justice laws codified at  
2 18 U.S.C. 1512 or the atomic energy act/energy reorganization act.

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

6 (c) "Governmental body" shall mean (i) an officer, employee, agency,  
7 department, division, bureau, board, commission, council, authority or  
8 other body of a public employer, (ii) employee, committee, member, or  
9 commission of the legislative branch of government, (iii) a represen-  
10 tative, member or employee of a legislative body of a county, town,  
11 village or any other political subdivision or civil division of the  
12 state, (iv) a law enforcement agency or any member or employee of a law  
13 enforcement agency, ~~[(v)]~~ (v) the judiciary or any employee of the judi-  
14 ciary, (vi) employees at a nuclear-powered electric generating facility,  
15 or (vii) the United States nuclear regulatory commission.

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

19 ~~[(a)]~~ A public employer shall not dismiss or take other disciplinary  
20 or other adverse personnel action against a public employee regarding  
21 the employee's employment because the employee discloses to a govern-  
22 mental body information: (i) regarding a violation of a law, rule or  
23 regulation which violation creates and presents a substantial and  
24 specific danger to the public health or safety; ~~[(ii)]~~ (ii) which the  
25 employee reasonably believes to be true and reasonably believes consti-  
26 tutes an improper governmental action; or (iii) for an employee at a  
27 nuclear-powered electric generating facility, as defined pursuant to  
28 section eighteen hundred seventy-three-a of the public authorities law,  
29 which relates to a public health or safety concern, regardless of wheth-  
30 er or not such concern relates to a violation of law, rule, or regu-  
31 lation. "Improper governmental action" shall mean any action by a public  
32 employer or employee, or an agent of such employer or employee, which is  
33 undertaken in the performance of such agent's official duties, whether  
34 or not such action is within the scope of his employment, and which is  
35 in violation of any federal, state or local law, rule or regulation.

36 § 9. Section 63 of the executive law is amended by adding a new subdi-  
37 vision 18 to read as follows:

38 18. Bring, upon the recommendation of the New York state energy  
39 research and development authority, actions pursuant to section seven  
40 hundred forty of the labor law and section seventy-five-b of the civil  
41 service law on behalf of employees at nuclear-powered electric generat-  
42 ing facilities, as defined pursuant to section eighteen hundred seven-  
43 ty-three-a of the public authorities law.

44 § 10. This act shall take effect immediately.