

STATE OF NEW YORK

7576--A

2021-2022 Regular Sessions

IN SENATE

December 8, 2021

Introduced by Sen. GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8

AN ACT to amend the legislative law, in relation to establishing a legislative commission on the future of the Long Island Power Authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The legislative law is amended by adding a new section 83-n
2 to read as follows:

3 § 83-n. Legislative commission on the future of the Long Island Power
4 Authority. 1. The legislature hereby finds and declares that chapter 517
5 of the laws of 1986 created the Long Island Power Authority (LIPA). Said
6 authority was created, in part, because the decisions by LILCO, the
7 private utility that provided electricity to Long Island and part of
8 Queens, "to commence construction of the Shoreham nuclear power plant
9 and thereafter to continue such construction were imprudent". Further,
10 the legislature found in chapter 517 of the laws of 1986 that "a situ-
11 ation threatening the economy, health and safety exists in the service
12 area". One of the two express purposes of the act was the closure of the
13 Shoreham nuclear power plant. In 1992, LIPA bought the Shoreham nuclear
14 power plant. The plant was fully decommissioned in 1994.

15 The second purpose of such chapter 517 was to replace LILCO with a
16 publicly owned power authority. The legislature found that "There is a
17 lack of confidence that the needs of the residents and of commerce and
18 industry in the service area for electricity can be supplied in a reli-
19 able, efficient and economic manner by the Long Island lighting company
20 (hereinafter referred to as "LILCO")" and "Such matters of state concern

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

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1 best can be dealt with by replacing such investor owned utility with a
2 publicly owned power authority."

3 In 1995, LIPA replaced LILCO as the electric company for its service
4 area. However, LIPA was never established as a true "publicly owned
5 power authority" as originally envisioned by the State Legislature.
6 Rather, since 1995, LIPA has opted for a third-party management model
7 whereby LIPA contracts its responsibility to manage the utility to a
8 private, investor owned utility company.

9 LIPA is the only utility in the nation that is operated under a third-
10 party management model. This model has repeatedly failed its customers.
11 There has been a lack of transparency, oversight, and accountability.
12 This failure has been most dramatically evidenced in the unacceptable
13 storm response by LIPA and its third-party contractors during Superstorm
14 Sandy in 2012 and Tropical Storm Isaias in 2020.

15 After more than 25 years of unsatisfactory management under the third-
16 party management model, a better alternative must be implemented. That
17 inquiry must begin with the original intent of chapter 517, whereby LIPA
18 was to directly manage and operate the utility as a true public power
19 utility. Initial investigations by LIPA after Tropical Storm Isaias in
20 2020-2021 indicate that both ratepayer savings and increased management
21 efficiencies could be achieved through the public power model.

22 Consequently, it is the purpose of this section to implement the
23 original vision for LIPA intended by chapter 517 of the laws of 1986, as
24 a publicly owned power company. The legislature hereby creates a
25 commission to provide the legislature with the specific actions, legis-
26 lation, and timeline necessary to restructure LIPA into a true publicly
27 owned power authority. The public must participate in that process so
28 that the new LIPA becomes transparent with proper oversight and account-
29 ability. The legislative commission shall submit its final report to the
30 legislature no later than April first, two thousand twenty-three.

31 2. A legislative commission is hereby established to investigate and
32 report to the legislature on the establishment of a public power model
33 for the operation of LIPA, whereby the authority would directly operate
34 the utility as a true public power authority. The commission shall
35 report to the legislature on the specific actions, legislation, and
36 timeline necessary to restructure LIPA into a true publicly owned power
37 authority. The commission shall consider: (a) the method of governance
38 of the public authority; (b) improved transparency, accountability, and
39 public involvement; (c) improved reliability of the system; (d) the
40 impact on electric rates; (e) improved storm response; (f) the powers
41 required by LIPA to more effectively operate the utility; (g) the over-
42 sight role of the department of public service and the public service
43 commission over LIPA's operation; (h) the impact on existing bonded
44 indebtedness; (i) improved long term energy planning; (j) compliance
45 with the goals of the New York state climate leadership and community
46 protection act; (k) increased reliance on renewable energy sources to
47 produce electricity; (l) taxation and payments in lieu of taxes; (m) the
48 special needs of communities that are or have been impacted by the
49 siting of power generating facilities; and (n) any other matter relevant
50 to the establishment of a public power model for the operation of LIPA.
51 In its report to the legislature, the commission shall provide for the
52 implementation of the public power model by LIPA no later than December
53 thirty-first, two thousand twenty-five.

54 3. The commission shall consist of eight members to be appointed as
55 follows: three members of the senate shall be appointed by the temporary
56 president of the senate; three members of the assembly shall be

1 appointed by the speaker of the assembly; one member of the senate shall
2 be appointed by the minority leader of the senate; and one member of the
3 assembly shall be appointed by the minority leader of the assembly. Any
4 vacancy that occurs in the commission shall be filled in the same manner
5 in which the original appointment was made. Co-chairs of the commission
6 shall be designated by the temporary president of the senate and the
7 speaker of the assembly, respectively. No member, officer, or employee
8 of the commission shall be disqualified from holding any other public
9 office or employment, nor shall he or she forfeit any such office or
10 employment by reason of his or her appointment hereunder, notwithstand-
11 ing the provisions of any general, special, or local law, ordinance, or
12 city charter.

13 4. The commission shall establish an advisory committee to actively
14 assist and advise the commission in the preparation of the public power
15 report required to be prepared pursuant to this section. The committee
16 shall consist of not more than fifteen members which shall include but
17 not be limited to representatives of organizations and institutions
18 representing business, labor, local government, Indian nations and
19 tribes, economic development, environmental, energy, social justice,
20 consumer, civic, school districts or higher education interests. The
21 committee by a majority vote shall elect a chairperson. The commission
22 shall meet periodically with the advisory committee, make available
23 working draft and other documents, and shall provide services to the
24 advisory committee as are necessary and appropriate to carry out its
25 functions under this section. Members of the advisory committee shall be
26 residents of the service area.

27 5. The commission may employ and at pleasure remove such personnel as
28 it may deem necessary for the performance of the commission's functions
29 and fix their compensation within the amount appropriated therefor. The
30 commission may hold public and private hearings and otherwise have all
31 of the powers of a legislative committee under this chapter. The members
32 of the commission shall receive no compensation for their services,
33 except as provided pursuant to section five-a of this chapter, but shall
34 be allowed their actual and necessary expenses incurred in the perform-
35 ance of their duties hereunder.

36 6. Employees of the commission shall be considered to be employees of
37 the legislature for all purposes.

38 7. The commission may request and shall receive from any subdivision,
39 department, board, bureau, commission, office, agency or other instru-
40 mentality of the state or of any political subdivision thereof, includ-
41 ing but not limited to the department of public service and the public
42 service commission, such facilities, assistance and data as it deems
43 necessary or desirable for the proper execution of its powers and
44 duties. The office of the state comptroller may, at its discretion,
45 provide to the commission such facilities, assistance, and data as may
46 be requested by the commission.

47 8. The commission is hereby authorized and empowered to make and sign
48 any agreements, and to do and perform any acts that may be necessary,
49 desirable or proper to carry out the purposes and objectives set forth
50 in this section.

51 9. The commission shall hold at least one public hearing with a public
52 comment period in each of the counties comprising the service area of
53 the Long Island Power Authority on the establishment of public power by
54 September thirtieth, two thousand twenty-two and before issuing a draft
55 report.

1 10. No later than December thirty-first, two thousand twenty-two, the
2 commission shall issue a draft report to the members of the legislature
3 regarding the establishment of a public power model for the Long Island
4 Power Authority. The commission shall hold at least one public hearing
5 with a public comment period in each of the counties comprising the
6 service area of the Long Island Power Authority on the draft report no
7 later than February fifteenth, two thousand twenty-three and before
8 issuing a final report.

9 11. No later than February first, two thousand twenty-three, the comp-
10 troller shall have the discretion to review the draft report and issue
11 to the legislature any recommendations relative to the findings
12 contained in the draft report which relates to the establishment of a
13 public power model for the Long Island Power Authority.

14 12. No later than April first, two thousand twenty-three, the commis-
15 sion shall issue a final report to the members of the legislature
16 regarding the establishment of a public power model for the Long Island
17 Power Authority. Such report shall provide any legislation required to
18 implement the public power model.

19 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
20 sion, section or part of this act shall be adjudged by any court of
21 competent jurisdiction to be invalid, such judgment shall not affect,
22 impair, or invalidate the remainder thereof, but shall be confined in
23 its operation to the clause, sentence, paragraph, subdivision, section
24 or part thereof directly involved in the controversy in which such judg-
25 ment shall have been rendered. It is hereby declared to be the intent of
26 the legislature that this act would have been enacted even if such
27 invalid provisions had not been included herein.

28 § 3. This act shall take effect immediately; provided, however, that
29 the amendments to article 5-A of the legislative law made by section one
30 of this act shall survive the repeal of such article as provided in
31 section 13 of chapter 141 of the laws of 1994, as amended.