

STATE OF NEW YORK

7576

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

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

23 In 1995, LIPA replaced LILCO as the electric company for its service
24 area. However, LIPA was never established as a true "publicly owned

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

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1 power authority" as originally envisioned by the State Legislature.
2 Rather, since 1995, LIPA has opted for a third-party management model
3 whereby LIPA contracts its responsibility to manage the utility to a
4 private, investor owned utility company.

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

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

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

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

50 3. The commission shall consist of eight members to be appointed as
51 follows: three members of the senate shall be appointed by the temporary
52 president of the senate; three members of the assembly shall be
53 appointed by the speaker of the assembly; one member of the senate shall
54 be appointed by the minority leader of the senate; and one member of the
55 assembly shall be appointed by the minority leader of the assembly. Any
56 vacancy that occurs in the commission shall be filled in the same manner

1 in which the original appointment was made. Co-chairs of the commission
2 shall be designated by the temporary president of the senate and the
3 speaker of the assembly, respectively. No member, officer, or employee
4 of the commission shall be disqualified from holding any other public
5 office or employment, nor shall he or she forfeit any such office or
6 employment by reason of his or her appointment hereunder, notwithstanding
7 the provisions of any general, special, or local law, ordinance, or
8 city charter.

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

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

32 6. Employees of the commission shall be considered to be employees of
33 the legislature for all purposes.

34 7. The commission may request and shall receive from any subdivision,
35 department, board, bureau, commission, office, agency or other instru-
36 mentality of the state or of any political subdivision thereof, includ-
37 ing but not limited to the department of public service, the public
38 service commission and the office of the state comptroller, such facili-
39 ties, assistance and data as it deems necessary or desirable for the
40 proper execution of its powers and duties.

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

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

50 10. No later than December thirty-first, two thousand twenty-two, the
51 commission shall issue a draft report to the members of the legislature
52 regarding the establishment of a public power model for the Long Island
53 Power Authority. The commission shall hold at least one public hearing
54 with a public comment period in each of the counties comprising the
55 service area of the Long Island Power Authority on the draft report no

1 later than February fifteenth, two thousand twenty-three and before
2 issuing a final report.

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

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

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

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