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:

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

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

The second purpose of such chapter 517 was to replace LILCO with a publicly owned power authority. The legislature found that "There is a lack of confidence that the needs of the residents and of commerce and industry in the service area for electricity can be supplied in a reliable, efficient and economic manner by the Long Island lighting company (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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best can be dealt with by replacing such investor owned utility with a publicly owned power authority."

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

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

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

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

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

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

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

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

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

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

7. The commission may request and shall receive from any subdivision, department, board, bureau, commission, office, agency or other instrumentality of the state or of any political subdivision thereof, including but not limited to the department of public service and the public service commission, such facilities, assistance and data as it deems necessary or desirable for the proper execution of its powers and duties. The office of the state comptroller may, at its discretion, provide to the commission such facilities, assistance, and data as may be requested by the commission.

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

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

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

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

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

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

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