

# STATE OF NEW YORK

10917

## IN ASSEMBLY

April 8, 2026

Introduced by M. of A. SOLAGES -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to requiring battery energy storage system owners and operators to demonstrate compliance with workforce reliability standards as a condition of state financial assistance; to amend the labor law, in relation to extending prevailing wage requirements and whistleblower protections to operations and maintenance employees at covered battery energy storage systems; to direct the public service commission to promulgate regulations; and to require a periodic review of implementation

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

- 1 Section 1. Legislative findings and declarations. The legislature  
2 hereby finds and declares that:
- 3 (a) The Climate Leadership and Community Protection Act (CLCPA)  
4 commits New York State to a zero-emissions electricity grid by 2040 and  
5 establishes a target of six gigawatts of energy storage by 2030, requir-  
6 ing the rapid deployment of battery energy storage systems (BESS) as  
7 critical grid infrastructure;
- 8 (b) Existing law imposes comprehensive labor standards upon the  
9 construction phase of battery energy storage and renewable energy  
10 projects; however, no equivalent uniform mandate governs the workforce  
11 performing operations and maintenance (O&M) of such facilities, creating  
12 a two-tier system in which workers who build these assets are protected  
13 but those who operate them over the life of the facility are not;
- 14 (c) Battery energy storage systems are long-term critical grid infras-  
15 tructure assets whose safe and reliable operation over decades of  
16 service depends upon a skilled, stable, certified, and adequately  
17 compensated workforce; high O&M workforce turnover, inadequate training,  
18 and unstable employment at BESS facilities present measurable risks to  
19 grid reliability and to communities hosting such installations;
- 20 (d) The state, as a grantor of substantial public financial assistance  
21 to battery energy storage projects through NYSERDA incentive programs,  
22 the Clean Energy Fund, Public Service Commission siting authority, and

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

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1 tax incentives under the real property tax law, possesses the authority  
2 to condition the receipt of such assistance upon compliance with work-  
3 force reliability standards, consistent with the market participant  
4 doctrine established in Building and Construction Trades Council v.  
5 Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.,  
6 507 U.S. 218 (1993), and White v. Massachusetts Council of Construction  
7 Employers, Inc., 460 U.S. 204 (1983), without infringing upon the  
8 National Labor Relations Act, 29 U.S.C. § 151 et seq., the state acting  
9 in its capacity as a market participant and benefits grantor and not as  
10 a regulator of the labor-management relationship; and

11 (e) It is the policy of the state that labor protections shall follow  
12 the asset from construction through the operational life of the facili-  
13 ty; that BESS O&M employment shall be subject to workforce reliability  
14 standards ensuring safety, continuity, and quality; and that the state's  
15 market participant authority shall be exercised through conditions on  
16 the receipt of public financial assistance, not as a condition upon the  
17 right to operate.

18 § 2. Section 66-r of the public service law is amended by adding thir-  
19 teen new subdivisions 1-b, 1-c, 1-d, 1-e, 1-f, 4-a, 4-b, 4-c, 4-d, 4-e,  
20 4-f, 4-g, and 4-h to read as follows:

21 1-b. "Battery energy storage system" or "BESS" shall mean any electric  
22 energy storage facility, including lithium-ion, non-lithium, and flow  
23 battery technologies, that: (i) has a nameplate capacity of one megawatt  
24 (MW) alternating current or greater; (ii) is connected to the trans-  
25 mission or distribution system of a utility operating in this state; and  
26 (iii) is utilized to store and discharge electricity in support of  
27 renewable energy generation, grid stability, or demand management func-  
28 tions. Battery energy storage systems with a nameplate capacity of less  
29 than one megawatt serving exclusively residential or small commercial  
30 customers shall be exempt from subdivisions four-a through four-h of  
31 this section.

32 1-c. "Qualified labor organization" shall mean a bona fide labor  
33 organization, as defined in section two of the labor law, that repres-  
34 ents or seeks to represent employees performing utility or energy oper-  
35 ations work, including O&M of electric generation, transmission,  
36 distribution, or energy storage facilities, within the service territory  
37 in which the battery energy storage system is located. The determination  
38 of which qualified labor organization holds majority representational  
39 standing in a given service territory shall be made by the commission  
40 pursuant to subdivision four-b of this section, based upon evidence from  
41 the department of labor, existing collective bargaining agreements, and  
42 other available records, with a presumption favoring the organization  
43 representing a majority of utility O&M employees within the relevant  
44 county.

45 1-d. "Substantially equivalent" as used in subparagraph (D) of para-  
46 graph (ii) of subdivision four-b of this section, shall mean substan-  
47 tively identical in workforce structure, operational jurisdiction, and  
48 employment continuity protections to the requirements of subdivision  
49 four-c of this section, and shall not be construed to permit an alterna-  
50 tive workforce model based solely on functional task similarity or tech-  
51 nological capability.

52 1-e. "JMOU" means a jurisdictional memorandum of understanding.

53 1-f. "Operations and maintenance" or "O&M" shall mean all activities  
54 performed to sustain, repair, monitor, test, inspect, or manage a  
55 battery energy storage system during its operational life, including but  
56 not limited to: (i) battery module and inverter maintenance and replace-

1 ment; (ii) thermal management system operation; (iii) battery management  
2 system monitoring, software updates, and cybersecurity compliance; (iv)  
3 fire suppression and safety system inspection and testing pursuant to  
4 NEPA 855 and applicable state fire code; (v) grid interconnection main-  
5 tenance; and (vi) NYISO dispatch coordination and related grid services.  
6 For purposes of this section, O&M functions shall be deemed to occur at  
7 the facility site regardless of whether performed remotely, through  
8 centralized operations centers, or through automated systems. Personnel  
9 performing monitoring, dispatch coordination, cybersecurity oversight,  
10 or control functions for a covered facility, whether on-site or remote,  
11 shall be considered O&M employees subject to the requirements of this  
12 section.

13 4-a. Within ninety days of completion of the rulemaking required under  
14 section four of the chapter of the laws of two thousand twenty-six that  
15 added this subdivision, the commission shall publish and maintain a  
16 service territory jurisdiction map identifying the qualified labor  
17 organization with majority representational standing for O&M employment  
18 in each geographic area of the state. Where a dispute arises between  
19 two or more labor organizations as to majority standing in a given area,  
20 the commission shall resolve such dispute within sixty days of receiving  
21 notice thereof, based upon: (i) department of labor certification  
22 records; (ii) the geographic scope of existing collective bargaining  
23 agreements in the energy operations sector; and (iii) employment data  
24 for comparable utility facilities in the relevant service territory.  
25 Pending resolution, the owner or operator may satisfy the requirements  
26 of subdivision four-b of this section through a PSC-certified workforce  
27 reliability program as provided in subparagraph (D) of paragraph (ii) of  
28 subdivision four-b of this section.

29 4-b. (i) No owner or operator of a battery energy storage system in  
30 this state shall receive any incentive, credit, benefit, grant, loan, or  
31 payment from the New York State Energy Research and Development Authori-  
32 ty, the Clean Energy Fund, or any program administered by the public  
33 service commission pursuant to section sixty-six-p of this article, or  
34 any tax abatement under section four hundred eighty-seven of the real  
35 property tax law, unless the owner or operator demonstrates compliance  
36 with workforce reliability standards as provided in paragraphs (ii),  
37 (iii), (iv) and (v) of this subdivision.

38 (ii) An owner or operator shall be deemed in compliance with the work-  
39 force reliability standard upon demonstration of any one of the follow-  
40 ing:

41 (A) a JMOU executed with the qualified labor organization identified  
42 under subdivision four-a of this section, meeting the minimum terms of  
43 subdivision four-c of this section;

44 (B) an existing collective bargaining agreement between the owner or  
45 operator and a qualified labor organization covering O&M employees,  
46 provided such agreement meets or exceeds the minimum terms of subdivi-  
47 sion four-c of this section;

48 (C) direct employment of O&M workers through a qualifying labor organ-  
49 ization dispatch or hiring hall referral system, where O&M employment is  
50 covered by applicable wages, benefits, and training standards meeting or  
51 exceeding subdivision four-c of this section; or

52 (D) a PSC-certified workforce reliability program meeting the minimum  
53 standards established by the commission through rulemaking, which shall  
54 include wage, training, certification, safety committee, and workforce  
55 continuity requirements substantially equivalent to those prescribed in  
56 subdivision four-c of this section; provided, however, that no such

1 program shall be certified unless the applicant demonstrates that: (1)  
2 the proposed workforce structure is consistent with prevailing jurisdic-  
3 tional practice for electric system operations and maintenance in the  
4 relevant service territory, as evidenced by the classifications and  
5 bargaining units historically covering electric utility operations in  
6 that territory; (2) the program does not displace, diminish, or substi-  
7 tute for the existing majority-represented utility O&M workforce in the  
8 relevant service territory; and (3) the personnel employed under the  
9 program hold qualifications recognized under applicable electric utility  
10 operational standards.

11 (iii) The safe harbor pathways of paragraph (ii) of this subdivision  
12 are alternatives; an owner or operator satisfying any one pathway shall  
13 be deemed compliant for all purposes of this subdivision. The commission  
14 shall not require any owner or operator to utilize a specific compliance  
15 pathway.

16 (iv) An owner or operator of a BESS commencing commercial operations  
17 on or after the effective date of this section shall demonstrate compli-  
18 ance no later than one hundred eighty days after such commercial oper-  
19 ations date. An owner or operator of a BESS in operation on the effec-  
20 tive date of this subdivision shall demonstrate compliance no later than  
21 one hundred eighty days after such effective date.

22 (v) Each owner or operator shall file an annual workforce compliance  
23 certification with the commission attesting to the compliance pathway  
24 utilized and continued satisfaction of the applicable minimum standards.

25 4-c. A JMOU, to qualify as a safe harbor compliance pathway under  
26 subparagraph (A) of paragraph (ii) of subdivision four-b of this  
27 section, shall at minimum provide for:

28 (i) Payment to all O&M employees of wages not less than the prevailing  
29 rate of wages and supplements as determined by the commissioner of labor  
30 pursuant to article eight of the labor law for the applicable O&M occu-  
31 ptional classifications and county;

32 (ii) A workforce engagement process providing for regular, scheduled  
33 labor-management communication on matters including safety, training,  
34 workforce continuity, and facility performance, no less frequently than  
35 quarterly;

36 (iii) An apprenticeship utilization commitment of not less than  
37 fifteen percent of total O&M labor hours performed by registered appren-  
38 tices enrolled in a state-approved apprenticeship program; provided  
39 that:

40 (A) for purposes of this paragraph, a "state-approved apprenticeship  
41 program" shall mean any apprenticeship program registered with the  
42 commissioner of labor pursuant to article twenty-three of the labor law,  
43 including programs jointly administered by an employer and a labor  
44 organization and covering the applicable O&M classification, and shall  
45 also include structured training programs certified by the commissioner  
46 as meeting equivalent standards; registered apprentices enrolled in any  
47 such program who perform work within the scope of their program on  
48 battery energy storage system infrastructure shall be deemed registered  
49 apprentices for purposes of this paragraph;

50 (B) for owners or operators of a single covered BESS facility with a  
51 total O&M workforce of fewer than ten employees, the apprenticeship  
52 utilization commitment of this paragraph shall be not less than one  
53 registered apprentice per facility or fifteen percent of total O&M labor  
54 hours, whichever is less; and

55 (C) for owners or operators of multiple covered BESS facilities within  
56 the same service territory, the apprenticeship utilization commitment

1 may be calculated on a portfolio basis across all such facilities,  
2 provided that apprentice labor is actually deployed at covered facili-  
3 ties and not concentrated solely at administrative or training  
4 locations;

5 (iv) A joint labor-management safety committee meeting not less than  
6 quarterly to review NFPA 855 compliance, incident records, and training  
7 certifications;

8 (v) Binding arbitration as the exclusive means of resolving disputes  
9 arising under the JMOU, with no strikes, lockouts, or work stoppages  
10 permitted during the term; and

11 (vi) Compliance with the training and certification requirements of  
12 subdivision four-e of this section. Nothing in this subdivision shall be  
13 construed to require the inclusion of employer neutrality provisions as  
14 a mandatory term of a JMOU; such provisions may be negotiated and  
15 included by the parties at their election.

16 4-d. (i) The commission shall enforce the workforce reliability stand-  
17 ards of this section and may, upon a finding of non-compliance, take any  
18 one or more of the following actions:

19 (A) suspend the disbursement of any state financial assistance during  
20 the period of non-compliance;

21 (B) order the clawback of previously disbursed state financial assist-  
22 ance, calculated on a pro-rata basis corresponding to the duration and  
23 extent of non-compliance, integrated with applicable NYSERDA contract  
24 provisions;

25 (C) impose civil penalties of not less than one thousand dollars nor  
26 more than ten thousand dollars for each day of non-compliance; provided,  
27 however, that for willful or repeated violations, such penalties shall  
28 be doubled; and

29 (D) impose such other remedies as the commission deems appropriate,  
30 including conditions on future NYSERDA program participation or PSC  
31 siting approvals.

32 (ii) Any qualified labor organization identified under subdivision  
33 four-a of this section may file a complaint with the commission or the  
34 department of labor alleging non-compliance with this section. The  
35 commission shall investigate and issue a written determination within  
36 ninety days of receipt of such complaint.

37 (iii) Nothing in this section shall be construed to require the estab-  
38 lishment of an employee benefit plan within the meaning of the Employee  
39 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.  
40 Prevailing wage supplemental benefit obligations shall be administered  
41 consistent with existing ERISA-compliant benefit structures under appli-  
42 cable department of labor prevailing wage schedules.

43 4-e. (i) For purposes of this section, a training program administered  
44 by or on behalf of a utility or operated pursuant to a collective  
45 bargaining agreement with a qualified labor organization shall be deemed  
46 a "commission-approved training program" upon certification by the  
47 commission that such program meets or exceeds the content and competency  
48 standards established through rulemaking pursuant to section four of the  
49 chapter of the laws of two thousand twenty-six that added this subdivi-  
50 sion, including proficiency in NFPA 855. The commission shall establish  
51 an expedited review process, not to exceed sixty days, for certification  
52 of such programs.

53 (ii) All O&M employees at battery energy storage systems subject to  
54 this section shall, prior to performing unsupervised O&M work:

55 (A) hold a current OSHA thirty-hour certification in either the  
56 construction industry or the general industry track, or such equivalent

1 certification as approved by the department of labor, including OSHA  
2 thirty-hour electric utility training programs;

3 (B) demonstrate proficiency in NFPA 855 Standard for the Installation  
4 of Stationary Energy Storage Systems, as evidenced by completion of a  
5 commission-approved training program; in administering the approval of  
6 training programs under this subparagraph, the commission shall: (1)  
7 give priority approval to programs offered by joint labor-management  
8 training funds and state-registered apprenticeship programs; and (2)  
9 require any original equipment manufacturer training program to demon-  
10 strate that it meets the same content and competency standards as  
11 commission-approved programs before receiving approval; and

12 (C) complete any additional training required by the commission  
13 through rulemaking for the specific battery technology deployed at the  
14 facility.

15 (iii) Each O&M employee shall complete not less than sixteen hours of  
16 continuing education and training annually, including updates to appli-  
17 cable code requirements and battery technology. Such hours may be satis-  
18 fied by any combination of employer-provided, labor organization-provid-  
19 ed, or third-party training covering applicable code, technology, or  
20 safety content.

21 (iv) The owner or operator shall maintain records of training certifi-  
22 fications for all O&M employees and make such records available to the  
23 commission and the department of labor upon request.

24 (v) Notwithstanding subparagraph (B) of paragraph (ii) of this subdivi-  
25 sion, for O&M employees employed at a covered facility on the effec-  
26 tive date of this section, compliance with the NFPA 855 proficiency  
27 requirement shall be required no later than eighteen months after the  
28 commission first approves a training program satisfying subparagraph (B)  
29 of paragraph (ii) of this subdivision. During such transitional period,  
30 an O&M employee may perform O&M work under a documented training plan  
31 filed with the commission without the requirement that such work be  
32 performed under the supervision of a certified employee.

33 4-f. (i) Where a battery energy storage system is sold, transferred,  
34 or conveyed to a new owner or operator, the successor owner or operator  
35 shall:

36 (A) offer continued employment to all O&M employees employed at the  
37 facility immediately prior to the transfer, for a period of not less  
38 than one hundred eighty days following the transfer date; and

39 (B) demonstrate compliance with the workforce reliability standard of  
40 subdivision four-b of this section no later than one hundred eighty days  
41 following the effective date of the transfer.

42 (ii) The retention obligation of this subdivision shall not require a  
43 successor owner or operator to retain any employee for cause or to  
44 create positions that do not exist in the new operational structure but  
45 shall prevent the replacement of O&M employees solely for reasons relat-  
46 ing to workforce composition or labor organization affiliation during  
47 the one hundred eighty day retention period.

48 (iii) Where O&M employees at a facility subject to this subdivision  
49 are represented by a qualified labor organization at the time of trans-  
50 fer, the successor owner or operator shall: (A) recognize such labor  
51 organization as the collective bargaining representative of O&M employ-  
52 ees for the remaining term of any existing collective bargaining agree-  
53 ment in effect at the time of transfer; and (B) bargain in good faith  
54 with such labor organization prior to making any changes to wages,  
55 hours, or terms and conditions of employment during the one hundred  
56 eighty day retention period. Nothing in this paragraph shall require a

1 successor to assume any collective bargaining agreement, but no succes-  
2 sor shall unilaterally alter terms and conditions of employment of  
3 represented O&M employees during the retention period without first  
4 bargaining to agreement or impasse.

5 4-g. (i) The commission shall, through rulemaking, establish minimum  
6 O&M staffing standards for battery energy storage systems subject to  
7 this section, taking into account facility size, battery chemistry, grid  
8 interconnection complexity, and proximity to population centers.

9 (ii) For facilities operating in a remote-monitoring or automated  
10 mode, the owner or operator shall maintain a documented rapid response  
11 protocol designating qualified O&M personnel capable of on-site response  
12 within a commission-specified time period in the event of an alarm,  
13 fault, or grid disturbance.

14 (iii) Minimum staffing rules shall be reviewed as part of the five-  
15 year review required under section seven of this act and updated to  
16 reflect technological changes in battery storage and grid operations.

17 4-h. Within one hundred eighty days of the effective date of this  
18 subdivision, the commissioner of labor, in consultation with the commis-  
19 sion and with qualified labor organizations representing O&M employees,  
20 shall establish one or more apprenticeship classifications applicable to  
21 battery energy storage system operations and maintenance work and shall  
22 work with existing state-registered apprenticeship programs to expand  
23 their scope to include such classifications. Pending establishment of  
24 such classifications, apprentices enrolled in any state-registered  
25 apprenticeship program performing work within the scope of their program  
26 on battery energy storage system infrastructure shall be deemed regis-  
27 tered apprentices for purposes of subdivision four-b of this section.

28 § 3. Section 224-d of the labor law is amended by adding a new subdivi-  
29 sion 9 to read as follows:

30 9. a. For purposes of this subdivision:

31 (i) "Covered battery energy storage system" shall mean any battery  
32 energy storage system, as defined in subdivision one-b of section  
33 sixty-six-r of the public service law, that: (A) has a nameplate capaci-  
34 ty exceeding five megawatts; or (B) has a nameplate capacity of one  
35 megawatt alternating current or greater and receives state financial  
36 assistance, as defined in subparagraph (iii) of this paragraph, consti-  
37 tuting more than thirty percent of total project costs. Battery energy  
38 storage systems with a nameplate capacity of less than one megawatt  
39 servng exclusively residential customers shall be exempt.

40 (ii) "O&M employee" shall mean any person employed by the owner, oper-  
41 ator, or any contractor or subcontractor thereof to perform operations  
42 and maintenance, as defined in subdivision one-f of section sixty-six-r  
43 of the public service law, at a covered battery energy storage system.

44 (iii) "State financial assistance" shall mean any grant, incentive  
45 payment, loan, tax abatement, or benefit provided by the New York State  
46 Energy Research and Development Authority, the Clean Energy Fund, the  
47 public service commission, or pursuant to section four hundred eighty-  
48 seven of the real property tax law.

49 b. (i) Every owner or operator of a covered battery energy storage  
50 system shall pay or cause to be paid to each O&M employee a wage of not  
51 less than the prevailing rate of wages and supplements for the occupa-  
52 tion and county in which such employee performs work, as determined by  
53 the commissioner pursuant to article eight of this chapter. In estab-  
54 lishing prevailing wage schedules for O&M employee classifications, the  
55 commissioner shall: (A) classify each O&M work function based upon the  
56 most similar existing prevailing wage classification, including but not

1 limited to journeyman electrician, substation operator, control systems  
2 operator, and instrumentation technician; (B) set the prevailing wage  
3 for any new O&M classification, including battery systems technician and  
4 related classifications, at not less than the rate of the most compara-  
5 ble existing classification covering similar electrical systems work in  
6 the relevant county; and (C) publish prevailing wage schedules based  
7 upon applicable collective bargaining agreements and wage surveys for  
8 the relevant geographic areas. The prevailing wage for O&M work at  
9 covered battery energy storage system facilities shall in no case be  
10 less than the prevailing rate for journeyman electricians in the appli-  
11 cable county.

12 (ii) Where O&M functions are performed by a contractor or subcontrac-  
13 tor, the owner or operator of the covered facility shall remain jointly  
14 and severally liable for compliance with all requirements of this subdivi-  
15 vision. No owner or operator shall structure contractor or subcontractor  
16 arrangements for the purpose of, or with the effect of, circumventing  
17 the workforce continuity or qualified labor organization requirements of  
18 section sixty-six-r of the public service law. The commissioner may void  
19 any prevailing wage determination or direct the public service commis-  
20 sion to void any safe harbor determination upon a finding that contrac-  
21 tor or subcontractor arrangements were used to avoid compliance with  
22 this section.

23 (iii) Nothing in this paragraph shall be construed to diminish, limit,  
24 or supersede any right or obligation established by a collective  
25 bargaining agreement. The prevailing wage rates established pursuant to  
26 this section shall constitute a minimum floor; wages and benefits nego-  
27 tiated above such rates in collective bargaining agreements shall not be  
28 affected by, and shall not be subject to reduction by reference to, any  
29 prevailing wage schedule established under this paragraph.

30 c. Every owner, operator, contractor, and subcontractor subject to  
31 this subdivision shall: (i) maintain certified payroll records for each  
32 O&M employee; (ii) file certified payroll compliance reports with the  
33 commissioner on a quarterly basis; and (iii) permit inspection of  
34 payroll records by the commissioner upon request. Qualified labor organ-  
35 izations may file written challenges to certified payroll filings with  
36 the commissioner, who shall investigate such challenges within sixty  
37 days.

38 d. The provisions of this article relating to enforcement, penalties,  
39 debarment, and private rights of action shall apply to violations of  
40 this subdivision. The commissioner may notify NYSERDA and the public  
41 service commission of any finding of non-compliance, which shall consti-  
42 tute grounds for the suspension or pro-rata clawback of state financial  
43 assistance.

44 e. (i) No owner, operator, contractor, or subcontractor shall  
45 discharge, threaten, penalize, demote, or otherwise discriminate or  
46 retaliate against any O&M employee by reason of such employee's disclo-  
47 sure of information to the commissioner, the public service commission,  
48 or a qualified labor organization regarding a potential violation of  
49 this subdivision.

50 (ii) An O&M employee subjected to retaliation in violation of this  
51 paragraph may bring a civil action for: (A) reinstatement; (B) back pay  
52 and lost benefits; (C) reasonable attorneys' fees and costs; and (D)  
53 such other relief as the court deems appropriate. Such action must be  
54 commenced within two years of the retaliatory act.

55 f. This subdivision shall apply to covered battery energy storage  
56 systems commencing commercial operations on or after the effective date

1 of this subdivision. For covered systems in operation on such date,  
2 compliance shall be required no later than one hundred eighty days after  
3 such effective date.

4 g. This subdivision shall be construed in a manner consistent with all  
5 applicable federal law. The state, in enacting this subdivision, acts in  
6 its capacity as a market participant and as a grantor of public finan-  
7 cial assistance, consistent with the doctrine established in Building  
8 and Construction Trades Council v. Associated Builders and Contractors  
9 of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993), and does not  
10 act as a regulator of the labor-management relationship within the mean-  
11 ing of the National Labor Relations Act, 29 U.S.C. § 151 et seq. Noth-  
12 ing herein shall be construed to require the establishment of an employ-  
13 ee benefit plan within the meaning of the Employee Retirement Income  
14 Security Act of 1974, 29 U.S.C. § 1001 et seq.

15 § 4. The public service commission shall, within three hundred sixty-  
16 five days of the effective date of this act, complete a rulemaking  
17 proceeding to:

18 (a) Establish a standard form jurisdictional memorandum of understand-  
19 ing template satisfying the minimum requirements of subdivision 4-c of  
20 section 66-r of the public service law, for use as a default where  
21 parties have not reached a negotiated agreement within sixty days of  
22 good-faith negotiations;

23 (b) Establish procedures for identifying the qualified labor organiza-  
24 tion with majority representational standing in each service territory,  
25 in consultation with the department of labor and labor organizations  
26 representing utility and energy operations employees, and publish the  
27 service territory jurisdiction map required under subdivision 4-a of  
28 section 66-r of the public service law within ninety days of the  
29 completion of such rulemaking;

30 (c) Establish workforce compliance certification, complaint, and  
31 enforcement processes consistent with subdivisions 4-b, 4-c and 4-d of  
32 section 66-r of the public service law;

33 (d) Establish minimum staffing standards for BESS facilities pursuant  
34 to subdivision 4-g of section 66-r of the public service law, including  
35 rapid response protocols for remotely-operated facilities;

36 (e) Establish a PSC-certified workforce reliability program as an  
37 alternative compliance pathway under subparagraph (D) of paragraph (ii)  
38 of subdivision 4-b of section 66-r of the public service law. In estab-  
39 lishing such program, the commission shall conduct not less than two  
40 public hearings at which qualified labor organizations are designated as  
41 parties with the right to submit written comments and present evidence,  
42 and shall make affirmative written findings addressing why any certified  
43 program is consistent with prevailing labor relations practices in the  
44 electric utility sector before approving any program under that pathway;

45 (f) Amend program solicitation and contract requirements, including  
46 the Bulk and Retail Energy Storage Incentive Programs administered by  
47 NYSERDA, to reflect the requirements of this act;

48 (g) Coordinate with the commissioner of labor to establish battery  
49 energy storage system O&M apprenticeship classifications pursuant to  
50 subdivision 4-h of section 66-r of the public service law and to approve  
51 training programs satisfying the requirements of subdivision 4-e of  
52 section 66-r of the public service law, giving priority to programs  
53 offered by joint labor-management training funds and state-registered  
54 apprenticeship programs;

55 (h) Conduct not less than two public hearings, providing opportunity  
56 for testimony from qualified labor organizations, O&M workers, BESS

1 owners and operators, NYSERDA, and other interested parties, prior to  
2 the adoption of final rules; and

3 (i) In the event the commission fails to complete rulemaking within  
4 three hundred sixty-five days, the standard form a jurisdictional memo-  
5 randum of understanding template contained in the commission's proposed  
6 rulemaking, or if none, a template prepared by the department of labor  
7 in consultation with representative labor organizations, shall be deemed  
8 adopted and in effect as of the three hundred sixty-sixth day after the  
9 effective date of this act.

10 § 5. No later than five years after the effective date of this act,  
11 and every five years thereafter, the public service commission and the  
12 commissioner of labor shall jointly submit a report to the governor, the  
13 temporary president of the senate, and the speaker of the assembly eval-  
14 uating implementation of this act, including:

15 (a) The number, size, and location of BESS subject to this act;

16 (b) Workforce compliance rates by safe harbor pathway utilized;

17 (c) operations and maintenance workforce employment levels, wage  
18 rates, benefit levels, and representation rates at covered facilities;

19 (d) Enforcement actions taken and civil penalties collected;

20 (e) The impact of this act on battery energy storage systems deploy-  
21 ment toward The Climate Leadership and Community Protection Act storage  
22 targets, including any documented effects on project costs or develop-  
23 ment timelines;

24 (f) The adequacy of minimum staffing standards in light of technolog-  
25 ical changes; and

26 (g) Recommended amendments, if any, in light of implementation experi-  
27 ence and changes in applicable federal law or technology.

28 § 6. Severability clause. If any clause, sentence, paragraph, subdivi-  
29 sion, section, or part of this act shall be adjudged by any court of  
30 competent jurisdiction to be invalid, such judgment shall not affect,  
31 impair, or invalidate the remainder thereof, but shall be confined in  
32 its operation to the clause, sentence, paragraph, subdivision, section,  
33 or part directly involved in the controversy.

34 § 7. This act shall take effect on the one hundred eightieth day after  
35 it shall have become a law; provided, however, that the provisions of  
36 section four of this act directing a Public Service Commission rulemak-  
37 ing shall take effect immediately.