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:

Section 1. Legislative findings and declarations. The legislature hereby finds and declares that:

(a) The Climate Leadership and Community Protection Act (CLCPA) commits New York State to a zero-emissions electricity grid by 2040 and establishes a target of six gigawatts of energy storage by 2030, requiring the rapid deployment of battery energy storage systems (BESS) as critical grid infrastructure;

(b) Existing law imposes comprehensive labor standards upon the construction phase of battery energy storage and renewable energy projects; however, no equivalent uniform mandate governs the workforce performing operations and maintenance (O&M) of such facilities, creating a two-tier system in which workers who build these assets are protected but those who operate them over the life of the facility are not;

(c) Battery energy storage systems are long-term critical grid infrastructure assets whose safe and reliable operation over decades of service depends upon a skilled, stable, certified, and adequately compensated workforce; high O&M workforce turnover, inadequate training, and unstable employment at BESS facilities present measurable risks to grid reliability and to communities hosting such installations;

(d) The state, as a grantor of substantial public financial assistance to battery energy storage projects through NYSERDA incentive programs, 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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tax incentives under the real property tax law, possesses the authority to condition the receipt of such assistance upon compliance with workforce reliability standards, consistent with the market participant doctrine established in Building and Construction Trades Council v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993), and White v. Massachusetts Council of Construction Employers, Inc., 460 U.S. 204 (1983), without infringing upon the National Labor Relations Act, 29 U.S.C. § 151 et seq., the state acting in its capacity as a market participant and benefits grantor and not as a regulator of the labor-management relationship; and

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

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

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

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

1-d. "Substantially equivalent" as used in subparagraph (D) of paragraph (ii) of subdivision four-b of this section, shall mean substantively identical in workforce structure, operational jurisdiction, and employment continuity protections to the requirements of subdivision four-c of this section, and shall not be construed to permit an alternative workforce model based solely on functional task similarity or technological capability.

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

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

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

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

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

(ii) An owner or operator shall be deemed in compliance with the workforce reliability standard upon demonstration of any one of the following:

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

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

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

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

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

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

(iv) An owner or operator of a BESS commencing commercial operations on or after the effective date of this section shall demonstrate compliance no later than one hundred eighty days after such commercial operations date. An owner or operator of a BESS in operation on the effective date of this subdivision shall demonstrate compliance no later than one hundred eighty days after such effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Each O&M employee shall complete not less than sixteen hours of continuing education and training annually, including updates to applicable code requirements and battery technology. Such hours may be satisfied by any combination of employer-provided, labor organization-provided, or third-party training covering applicable code, technology, or safety content.

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

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

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

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

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

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

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

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

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

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

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

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

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

9. a. For purposes of this subdivision:

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

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

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

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

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

(ii) Where O&M functions are performed by a contractor or subcontractor, the owner or operator of the covered facility shall remain jointly and severally liable for compliance with all requirements of this subdivision. No owner or operator shall structure contractor or subcontractor arrangements for the purpose of, or with the effect of, circumventing the workforce continuity or qualified labor organization requirements of section sixty-six-r of the public service law. The commissioner may void any prevailing wage determination or direct the public service commission to void any safe harbor determination upon a finding that contractor or subcontractor arrangements were used to avoid compliance with this section.

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

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

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

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

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

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

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

g. This subdivision shall be construed in a manner consistent with all applicable federal law. The state, in enacting this subdivision, acts in its capacity as a market participant and as a grantor of public financial assistance, consistent with the doctrine established in Building and Construction Trades Council v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993), and does not act as a regulator of the labor-management relationship within the meaning of the National Labor Relations Act, 29 U.S.C. § 151 et seq. Nothing herein shall be construed to require the establishment of an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Enforcement actions taken and civil penalties collected;

(e) The impact of this act on battery energy storage systems deployment toward The Climate Leadership and Community Protection Act storage targets, including any documented effects on project costs or development timelines;

(f) The adequacy of minimum staffing standards in light of technological changes; and

(g) Recommended amendments, if any, in light of implementation experience and changes in applicable federal law or technology.

§ 6. 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 directly involved in the controversy.

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