

S. 7665

A. 10138

S E N A T E - A S S E M B L Y

May 12, 2016

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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

AN ACT to amend the public authorities law and the public service law, in relation to enacting the "Long Island power authority ratepayers protection act"; and to repeal certain provisions of the public authorities law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act may be cited as the "Long Island
2 power authority ratepayers protection act".
3 S 2. Section 1020-d of the public authorities law, as amended by
4 section 4 of part A of chapter 173 of the laws of 2013, is amended to
5 read as follows:
6 S 1020-d. Board of trustees. 1. Starting on January first, two thou-
7 sand fourteen, the board of the authority shall be constituted and
8 consist of nine trustees all of whom shall be residents of the service
9 area, five of whom shall be appointed by the governor, one of whom the
10 governor shall designate as chair, and serve at his or her pleasure, two
11 of whom shall be appointed by the temporary president of the senate, and
12 two of whom shall be appointed by the speaker of the assembly. One of
13 the governor's appointees shall serve an initial term of two years; one
14 of the governor's appointees shall serve an initial term of three years;
15 and three of the governor's appointees shall serve an initial term of
16 four years. One of the appointees of the temporary president of the
17 senate and one of the appointees of the speaker of the assembly shall
18 serve initial terms of two years; and one appointee of the temporary
19 president of the senate and one appointee of the speaker of the assembly
20 shall serve initial terms of three years. Thereafter, all terms shall be
21 for a period of four years. In the event of a vacancy occurring in the
22 office of trustee by death, resignation or otherwise, the respective

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

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1 appointing officer shall appoint a successor who shall hold office for
2 the unexpired portion of the term.

3 1-A. (A) BEGINNING JANUARY FIRST, TWO THOUSAND NINETEEN, SUCH AUTHORI-
4 TY SHALL CONSIST OF NINE TRUSTEES. ONE TRUSTEE, WHO SHALL BE THE CHAIR-
5 PERSON, SHALL BE A RESIDENT OF THE SERVICE AREA, SHALL BE APPOINTED BY
6 THE GOVERNOR SUBJECT TO CONFIRMATION BY THE SENATE, AND SHALL SERVE AT
7 THE GOVERNOR'S PLEASURE. EIGHT TRUSTEES SHALL BE ELECTED FROM DISTRICTS
8 ESTABLISHED BY THE LEGISLATURE. EACH ELECTED TRUSTEE SHALL BE A RESIDENT
9 OF THE DISTRICT FROM WHICH HE OR SHE IS ELECTED. NO PERSON WHO IS AN
10 ELECTED OR APPOINTED OFFICIAL OF THE STATE OR ANY MUNICIPALITY OR ANY
11 AGENCY OR INSTRUMENTALITY THEREOF, SHALL BE QUALIFIED TO SERVE AS AN
12 ELECTED TRUSTEE. EACH ELECTED TRUSTEE SHALL HOLD OFFICE UNTIL HIS OR HER
13 SUCCESSOR HAS BEEN ELECTED AND QUALIFIED. IN THE EVENT OF A VACANCY
14 OCCURRING IN THE OFFICE OF A TRUSTEE BY DEATH, RESIGNATION OR OTHERWISE,
15 A SUCCESSOR SHALL BE CHOSEN TO HOLD OFFICE FOR THE UNEXPIRED TERM IN THE
16 MANNER PRESCRIBED BY THE ELECTION LAW.

17 (B) PRIOR TO MAY FIRST, TWO THOUSAND EIGHTEEN, THE LEGISLATURE SHALL
18 ESTABLISH EIGHT DISTRICTS, WHICH SHALL BE EQUAL IN POPULATION AS DETER-
19 MINED BY THE LAST FEDERAL DECENNIAL CENSUS. PRIOR TO MAY FIRST, TWO
20 THOUSAND TWENTY-TWO AND EACH TENTH YEAR THEREAFTER, THE LEGISLATURE
21 SHALL REAPPORTION THE EIGHT DISTRICTS, WHICH SHALL BE EQUAL IN POPU-
22 LATION AS DETERMINED BY THE LAST FEDERAL DECENNIAL CENSUS.

23 (C) SUCH TRUSTEES, SHALL BE ELECTED IN ELECTIONS CONDUCTED BY THE
24 BOARDS OF ELECTIONS PURSUANT TO APPLICABLE PROVISIONS OF THE ELECTION
25 LAW. THE FIRST SUCH ELECTION SHALL BE HELD ON THE FIRST TUESDAY IN
26 DECEMBER TWO THOUSAND EIGHTEEN, AND THE TRUSTEES SO ELECTED SHALL TAKE
27 OFFICE ON JANUARY FIRST, TWO THOUSAND NINETEEN. AT SUCH ELECTION ALL
28 EIGHT TRUSTEES SHALL BE ELECTED FOR A TERM OF TWO YEARS. EACH SUCH TERM
29 ENDING ON DECEMBER THIRTY-FIRST OF THE LAST YEAR THEREOF. NO POLITICAL
30 PARTY SHALL BE ENTITLED TO NOMINATE CANDIDATES FOR THE OFFICE OF TRUSTEE
31 AT ANY SUCH ELECTION.

32 (D) FIVE TRUSTEES SHALL CONSTITUTE A QUORUM FOR THE PURPOSE OF ORGAN-
33 IZING THE AUTHORITY AND CONDUCTING THE BUSINESS THEREOF. THE VOTE OF A
34 MAJORITY OF THE TRUSTEES SHALL BE REQUIRED FOR THE PURPOSE OF TAKING
35 ACTION.

36 2. No trustee shall receive a salary, but each shall be entitled to
37 reimbursement for reasonable expenses in the performance of duties
38 assigned hereunder.

39 3. [Notwithstanding the provisions of any other law, no trustee, offi-
40 cer or employee of the state, any state agency or municipality appointed
41 a trustee shall be deemed to have forfeited or shall forfeit his or her
42 office or employment by reason of his or her acceptance of a trusteeship
43 on the authority, his or her service thereon or his or her employment
44 therewith.

45 4.] All trustees appointed under this section shall have relevant
46 utility, corporate board or financial experience. BEGINNING JANUARY
47 FIRST, TWO THOUSAND NINETEEN ONLY THE CHAIRPERSON APPOINTED BY THE
48 GOVERNOR SHALL BE SUBJECT TO THIS SUBDIVISION.

49 S 3. Subdivision (u) of section 1020-f of the public authorities law,
50 as added by section 7 of part A of chapter 173 of the laws of 2013 and
51 paragraph 2-a as added by chapter 471 of the laws of 2014, is amended to
52 read as follows:

53 (u) Rate plans. Subject to subdivision six of section one thousand
54 twenty-k of this title to fix rates and charges for the furnishing or
55 rendition of gas or electric power or of any related service at the
56 lowest level consistent with sound fiscal and operating practices of the

1 authority and which provide for safe and adequate service. In implement-
2 ing this power:

3 1. The authority and the service provider shall, on or before February
4 first, two thousand fifteen, submit for review to the department of
5 public service a three-year rate proposal for rates and charges to take
6 effect on or after January first, two thousand sixteen.

7 2. The authority and the service provider shall thereafter submit for
8 review AND APPROVAL to the department of public service any rate
9 proposal that would increase the rates and charges and thus increase the
10 aggregate revenues of the authority by more than two and one-half
11 percent to be measured on an annual basis[; provided, however, that the
12 authority may place such rates and charges into effect on an interim
13 basis, subject to prospective rate adjustment; provided, further, that a
14 final rate plan issued by the authority that would not so increase such
15 rates and charges shall not be subject to the requirements of paragraph
16 four of this subdivision and shall be considered final for the purposes
17 of review under article seventy-eight of the civil practice law and
18 rules]. The authority and/or the service provider may otherwise submit
19 for review AND APPROVAL to such department any rate proposal irrespec-
20 tive of its effect on revenues.

21 2-a. The authority and the service provider shall not submit any rate
22 proposal that shall assess any fee, penalty or other charge of any kind
23 for the voluntary termination of electric service to any residential
24 customer for the purpose of utilizing alternative sources of electric
25 generation in excess of that charged to customers who terminate their
26 electric service for any other reason.

27 3. The authority shall not fix any final rates and charges proposed
28 that would not be subject to review by the department of public service
29 pursuant to paragraphs one and two of this subdivision until after hold-
30 ing public hearings thereon upon reasonable public notice, with at least
31 one such hearing to be held each in the county of Suffolk and the county
32 of Nassau.

33 4. Any [recommendations] APPROVALS associated with a rate proposal
34 submitted pursuant to paragraphs one and two of this subdivision shall
35 be provided by the department of public service to the board of the
36 authority immediately upon their finalization by the department. [Unless
37 the board of the authority makes a preliminary determination in its
38 discretion that any particular recommendation is inconsistent with the
39 authority's sound fiscal operating practices, any existing contractual
40 or operating obligations, or the provision of safe and adequate service,
41 the] THE board shall [implement such recommendations] CONSIDER THE
42 APPROVAL OF THE DEPARTMENT as part of its DETERMINATION ON THE DEPART-
43 MENT final rate plan [and such]. THE BOARD SHALL NOT APPROVE A FINAL
44 RATE PLAN UNTIL IT HOLDS A PUBLIC HEARING IN EACH COUNTY OF THE SERVICE
45 AREA UPON AT LEAST THIRTY DAYS' NOTICE TO THE PUBLIC. THE BOARD SHALL
46 PROTECT THE ECONOMIC INTERESTS OF ITS RATEPAYERS AND THE SERVICE AREA IN
47 APPROVING ITS FINAL RATE PLAN. SUCH final determination shall be [deemed
48 to satisfy the requirements of this subdivision and be] considered final
49 for the purposes of review under article seventy-eight of the civil
50 practice law and rules. [The board shall make any such preliminary
51 determination of inconsistency within thirty days of receipt of such
52 recommendations, with notice and the basis of such determination being
53 provided to the department of public service, and contemporaneously
54 posted on the websites of the authority and its service provider. The
55 board shall thereafter, within thirty days of such posting and with due
56 advance notice to the public, hold a public hearing with respect to its

1 preliminary determination of inconsistency. At such hearing, the depart-
2 ment of public service shall present the basis for its recommendations,
3 the board shall present the basis for its determination of inconsistency
4 and the service provider may present its position. The authority and the
5 service provider may, during the time period before such public hearing
6 reach agreement with the department on disputed issues. Within thirty
7 days after such public hearing, the board of the authority shall
8 announce its final determination and planned implementation with respect
9 to any such recommendations. The authority's final determination of
10 inconsistency shall be subject to any applicable judicial review
11 proceeding, including review available under article seventy-eight of
12 the civil practice law and rules.]

13 S 4. Section 1020-h of the public authorities law, as added by chapter
14 517 of the laws of 1986, is amended by adding a new subdivision 12 to
15 read as follows:

16 12. NOTHING IN THIS TITLE SHALL BE CONSTRUED AS PREEMPTING, OR OTHER-
17 WISE LIMITING, THE RIGHTS OF ANY MUNICIPALITY LOCATED IN WHOLE OR IN
18 PART IN THE SERVICE AREA FROM EXERCISING ANY POWER OR AUTHORITY GRANTED
19 TO IT BY ARTICLE FOURTEEN-A OF THE GENERAL MUNICIPAL LAW.

20 S 5. Subdivision 1 of section 1020-k of the public authorities law, as
21 added by chapter 517 of the laws of 1986, is amended and a new subdivi-
22 sion 1-a is added to read as follows:

23 1. [The] EXCEPT AS MAY BE OTHERWISE PROVIDED IN THIS SECTION, THE
24 authority shall have power and is hereby authorized from time to time to
25 issue its negotiable bonds in conformity with applicable provisions of
26 the uniform commercial code for any purpose authorized by this title,
27 including without limitation (a) to acquire any real or personal proper-
28 ty or facilities deemed necessary by the authority, (b) to pay interest
29 on bonds or notes of the authority, (c) to establish reserves to secure
30 such bonds and notes, (d) to establish or maintain such other funds or
31 accounts for such purpose or purposes as the authority may deem neces-
32 sary or desirable, and (e) to pay all other expenses of the authority
33 incident to the issuance of such bonds or notes.

34 1-A. ANY ISSUANCE OF BONDS BY THE AUTHORITY MUST BE AUTHORIZED BY A
35 MAJORITY OF THE RATEPAYERS OF THE AUTHORITY BY A PUBLIC REFERENDUM AFTER
36 AT LEAST ONE PUBLIC HEARING IN EACH OF THE AFFECTED COUNTIES.

37 S 6. Section 1020-cc of the public authorities law, as amended by
38 section 11 of part A of chapter 173 of the laws of 2013, is amended to
39 read as follows:

40 S 1020-cc. Authority subject to certain provisions contained in the
41 state finance law, the public service law, the social services law and
42 the general municipal law. 1. All contracts of the authority shall be
43 subject to the provisions of the state finance law relating to contracts
44 made by the state. The authority shall also establish rules and regu-
45 lations with respect to providing to its residential gas, electric and
46 steam utility customers those rights and protections provided in article
47 two and sections one hundred seventeen and one hundred eighteen of the
48 public service law and section one hundred thirty-one-s of the social
49 services law. The authority shall conform to any safety standards
50 regarding manual lockable disconnect switches for solar electric gener-
51 ating equipment established by the public service commission pursuant to
52 subparagraph (ii) of paragraph (a) of subdivision five and subparagraph
53 (ii) of paragraph (a) of subdivision five-a of section sixty-six-j of
54 the public service law. The authority shall let contracts for
55 construction or purchase of supplies, materials, or equipment pursuant

1 to section one hundred three and paragraph (e) of subdivision four of
2 section one hundred twenty-w of the general municipal law.

3 2. The authority and service provider shall provide to the state comp-
4 troller on March thirty-first and September thirtieth of each year a
5 report documenting each contract in excess of two hundred fifty thousand
6 dollars per year entered into with a third party and related to manage-
7 ment and operation services associated with the authority's electric
8 transmission and distribution system, including the name of the third
9 party, the contract term and a description of services or goods to be
10 procured, and post such report on each of their websites. [All contracts
11 entered into between the service provider and third parties are not
12 subject to the requirements of subdivision one of this section.]

13 S 7. Section 1020-dd of the public authorities law is REPEALED.

14 S 8. Paragraph a of subdivision 3 of section 3-b of the public service
15 law, as added by section 1 of part A of chapter 173 of the laws of 2013,
16 is amended to read as follows:

17 (a) Review and [make recommendations to the board of the Long Island
18 power authority with respect to] APPROVE the rates and charges OF THE
19 LONG ISLAND POWER AUTHORITY, including charges related to energy effi-
20 ciency and renewable energy programs, to be established by the authority
21 and become applicable on or after January first, two thousand sixteen
22 pursuant to subdivision (u) of section one thousand twenty-f of the
23 public authorities law.

24 (i) The purpose of such review is to [make recommendations] APPROVE
25 RATES AND CHARGES designed to ensure that the authority and the service
26 provider provide safe and adequate transmission and distribution service
27 at rates set at the lowest level consistent with sound fiscal operating
28 practices. HOWEVER, AT NO TIME WILL THE DEPARTMENT AUTHORIZE A RATE
29 INCREASE TO OFFSET REVENUE LOSS DUE TO ENERGY CONSERVATION EFFORTS BY
30 CONSUMERS.

31 (ii) The department's [recommendations] APPROVAL shall be designed to
32 be consistent with ensuring that the revenue requirements related to
33 such rate review are sufficient to satisfy the authority's obligations
34 with respect to its bonds, notes and all other contracts.

35 (iii) [In the context of such review, the department may not make any
36 recommendation that would modify the compensation or fee structure
37 included within the operations services agreement.] IN THE CONTEXT OF
38 SUCH REVIEW, THE DEPARTMENT MAY MAKE RECOMMENDATIONS WITH REGARD TO THE
39 COMPENSATION OR FEE STRUCTURE INCLUDED WITHIN THE OPERATIONS SERVICES
40 AGREEMENT.

41 (iv) In undertaking such review and [in making recommendations related
42 to] APPROVAL OF the proposed rates and charges, the department shall
43 establish standards, policies and procedures that, at a minimum, provide
44 for public statement and evidentiary hearings and participation of
45 intervenors and other parties, and ensure that any final [recommenda-
46 tions] APPROVALS related to the proposed rates and charges are provided
47 to the authority within two hundred forty days of the filing with the
48 department of such plan.

49 (v) The parties to any such rate review proceeding shall include, but
50 not be limited to, department staff, the authority, the service provider
51 and, to the extent it deems necessary or appropriate, the utility inter-
52 vention unit.

53 S 9. Severability. If any provision of this act or the application
54 thereof shall for any reason be adjudged by any court of competent
55 jurisdiction to be invalid, such judgment shall not affect, impair or
56 invalidate the remainder of this act, but shall be confined in its oper-

1 ation to the provision thereof directly involved in the controversy in
2 which the judgement shall have been rendered.
3 S 10. This act shall take effect immediately.