S T A T E  O F  N E W  Y O R K

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:

Section 1. Short title. This act may be cited as the "Long Island power authority ratepayers protection act".

S 2. Section 1020-d of the public authorities law, as amended by section 4 of part A of chapter 173 of the laws of 2013, is amended to read as follows:

S 1020-d. Board of trustees. 1. Starting on January first, two thousand fourteen, the board of the authority shall be constituted and consist of nine trustees all of whom shall be residents of the service area, five of whom shall be appointed by the governor, one of whom the governor shall designate as chair, and serve at his or her pleasure, two of whom shall be appointed by the temporary president of the senate, and two of whom shall be appointed by the speaker of the assembly. One of the governor's appointees shall serve an initial term of two years; one of the governor's appointees shall serve an initial term of three years; and three of the governor's appointees shall serve an initial term of four years. One of the appointees of the temporary president of the senate and one of the appointees of the speaker of the assembly shall serve initial terms of two years; and one appointee of the temporary president of the senate and one appointee of the speaker of the assembly shall serve initial terms of three years. Thereafter, all terms shall be for a period of four years. In the event of a vacancy occurring in the 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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appointing officer shall appoint a successor who shall hold office for the unexpired portion of the term.

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

(B) PRIOR TO MAY FIRST, TWO THOUSAND EIGHTEEN, THE LEGISLATURE SHALL ESTABLISH EIGHT DISTRICTS, WHICH SHALL BE EQUAL IN POPULATION AS DETERMINED BY THE LAST FEDERAL DECENNIAL CENSUS. PRIOR TO MAY FIRST, TWO THOUSAND TWENTY-TWO AND EACH TENTH YEAR THEREAFTER, THE LEGISLATURE SHALL REAPPORTION THE EIGHT DISTRICTS, WHICH SHALL BE EQUAL IN POPULATION AS DETERMINED BY THE LAST FEDERAL DECENNIAL CENSUS.

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

(D) FIVE TRUSTEES SHALL CONSTITUTE A QUORUM FOR THE PURPOSE OF ORGANIZING THE AUTHORITY AND CONDUCTING THE BUSINESS THEREOF. THE VOTE OF A MAJORITY OF THE TRUSTEES SHALL BE REQUIRED FOR THE PURPOSE OF TAKING ACTION.

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

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

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

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

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

authority and which provide for safe and adequate service. In implementing this power:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ation to the provision thereof directly involved in the controversy in which the judgement shall have been rendered.

S 10. This act shall take effect immediately.