

# STATE OF NEW YORK

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5503

2019-2020 Regular Sessions

## IN ASSEMBLY

February 13, 2019

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Introduced by M. of A. THIELE, ENGLEBRIGHT, MONTESANO, RAIA, RA, RAMOS, MCDONOUGH, JEAN-PIERRE, PALUMBO -- 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"

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 § 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 and a  
5 new subdivision 1-a is added to read as follows:

6 § 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 twenty-two, such  
4 authority shall consist of nine trustees. One trustee, who shall be the  
5 chairperson, shall be a resident of the service area, shall be appointed  
6 by the governor subject to confirmation by the senate, and shall serve  
7 at the governor's pleasure. Eight trustees shall be elected from  
8 districts established by the legislature. Each elected trustee shall be  
9 a resident of the district from which he or she is elected. No person  
10 who is an elected or appointed official of the state or any municipality  
11 or any agency or instrumentality thereof, shall be qualified to serve as  
12 an elected trustee. Each elected trustee shall hold office until his or  
13 her 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 twenty-one, 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-five 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 twenty-one, and the trustees so elected shall take  
27 office on January first, two thousand twenty-two. 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]~~ The chairperson appointed under this section shall  
46 have relevant utility, corporate board or financial experience.

47 § 3. Paragraphs 2, 3 and 4 of subdivision (u) of section 1020-f of the  
48 public authorities law, as added by section 7 of part A of chapter 173  
49 of the laws of 2013, are amended to read as follows:

50 2. The authority and the service provider shall thereafter submit for  
51 review to the department of public service any rate proposal that would  
52 increase the rates and charges and thus increase the aggregate revenues  
53 of the authority by more than two and one-half percent to be measured on  
54 an annual basis~~[, provided, however, that the authority may place such~~  
55 ~~rates and charges into effect on an interim basis, subject to prospec-~~  
56 ~~tive rate adjustment, provided, further, that a final rate plan issued~~

1 ~~by the authority that would not so increase such rates and charges shall~~  
2 ~~not be subject to the requirements of paragraph four of this subdivision~~  
3 ~~and shall be considered final for the purposes of review under article~~  
4 ~~seventy-eight of the civil practice law and rules].~~ The authority  
5 and/or the service provider may otherwise submit for review to such  
6 department any rate proposal irrespective of its effect on revenues.

7 3. The authority shall not fix any final rates and charges proposed  
8 that would not be subject to review by the department of public service  
9 pursuant to paragraphs one and two of this subdivision until after hold-  
10 ing public hearings thereon upon reasonable public notice, with at least  
11 one such hearing to be held in each [~~in the~~] county [~~of Suffolk and the~~  
12 ~~county of Nassau~~] within the service area upon at least thirty days  
13 notice to the public. The authority and service provider shall provide  
14 to their customers advance written notice of the date and place of any  
15 public hearings concerning proposed increases in rates.

16 4. Any recommendations associated with a rate proposal submitted  
17 pursuant to paragraphs one and two of this subdivision shall be provided  
18 by the department of public service to the board of the authority imme-  
19 diately upon their finalization by the department. [~~Unless the board of~~  
20 ~~the authority makes a preliminary determination in its discretion that~~  
21 ~~any particular recommendation is inconsistent with the authority's sound~~  
22 ~~fiscal operating practices, any existing contractual or operating obli-~~  
23 ~~gations, or the provision of safe and adequate service, the board shall~~  
24 ~~implement such recommendations as part of its final rate plan and such~~  
25 ~~final determination shall be deemed to satisfy the requirements of this~~  
26 ~~subdivision and be considered final for the purposes of review under~~  
27 ~~article seventy-eight of the civil practice law and rules. The board~~  
28 ~~shall make any such preliminary determination of inconsistency within~~  
29 ~~thirty days of receipt of such recommendations, with notice and the~~  
30 ~~basis of such determination being provided to the department of public~~  
31 ~~service, and contemporaneously posted on the websites of the authority~~  
32 ~~and its service provider. The board shall thereafter, within thirty days~~  
33 ~~of such posting and with due advance notice to the public, hold a public~~  
34 ~~hearing with respect to its preliminary determination of inconsistency.~~  
35 ~~At such hearing, the department of public service shall present the~~  
36 ~~basis for its recommendations, the board shall present the basis for its~~  
37 ~~determination of inconsistency and the service provider may present its~~  
38 ~~position. The authority and the service provider may, during the time~~  
39 ~~period before such public hearing reach agreement with the department on~~  
40 ~~disputed issues. Within thirty days after such public hearing, the board~~  
41 ~~of the authority shall announce its final determination and planned~~  
42 ~~implementation with respect to any such recommendations. The authority's~~  
43 ~~final determination of inconsistency shall be subject to any applicable~~  
44 ~~judicial review proceeding, including review available under article~~  
45 ~~seventy-eight of the civil practice law and rules.]~~ The board shall not  
46 approve a final rate plan until it holds a public hearing in each county  
47 within the service area upon at least thirty days notice to the public.  
48 At such hearing, the department of public service shall present the  
49 basis for its recommendations. Within ninety days of the conclusion of  
50 the public hearing, the board shall render a final determination on the  
51 rate proposal. In making a final determination, the board shall protect  
52 the economic interests of its ratepayers and the service area. The board  
53 shall also consider the recommendations of the department and criteria  
54 in paragraph (a) of subdivision three of section three-b of the public  
55 service law. The board shall not be authorized to approve any rate  
56 increase to offset revenue loss due to energy conservation efforts by

1 consumers. Such final determination shall be considered final for the  
2 purposes of review under article seventy-eight of the civil practice law  
3 and rules.

4 § 4. Subparagraph (v) of paragraph (a) of subdivision 3 of section 3-b  
5 of the public service law, as amended by chapter 479 of the laws of  
6 2017, is amended and a new subparagraph (vi) is added to read as  
7 follows:

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

12 (vi) The department shall not recommend a rate increase to offset  
13 revenue loss due to energy conservation efforts by consumers.

14 § 5. Severability. If any provision of this act or the application  
15 thereof shall for any reason be adjudged by any court of competent  
16 jurisdiction to be invalid, such judgment shall not affect, impair or  
17 invalidate the remainder of this act, but shall be confined in its oper-  
18 ation to the provision thereof directly involved in the controversy in  
19 which the judgment shall have been rendered.

20 § 6. This act shall take effect immediately.