

# STATE OF NEW YORK

8154--B

## IN SENATE

April 8, 2020

Introduced by Sens. HARCKHAM, CARLUCCI, KAMINSKY, KRUEGER, MAY, METZGER, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to providing for decommissioning oversight boards for nuclear power plants in New York state

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

1 Section 1. The public service law is amended by adding a new section  
2 174 to read as follows:

3 § 174. New York state decommissioning oversight boards. 1. Defi-  
4 nitions. The following terms shall have the following meanings:

5 a. "Retirement" means the permanent closure of a nuclear power plant  
6 in the state that has been noticed to the nuclear regulatory commission  
7 ("NRC").

8 b. "Retiring facility" or "facility" means a nuclear power plant in  
9 the state whose permanent closure has been noticed to the nuclear regu-  
10 latory commission.

11 c. "Decommissioning period" means the time commencing from the retir-  
12 ing facility's notice to the nuclear regulatory commission of the intent  
13 to close permanently until the property has been released for reuse and  
14 all spent nuclear fuel has been removed from the site.

15 d. "Reuse" means the unrestricted use of the site subject to applica-  
16 ble nuclear regulatory commission regulations, and federal, state, and  
17 local laws.

18 e. "Decommissioning activities" means activities at the retiring  
19 facility to reduce residual radioactivity to a level that permits  
20 release of the property for reuse and the termination of the nuclear  
21 regulatory commission license but does not include activities associated  
22 with irradiated fuel management and site restoration activities, legal

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

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1 expenses, accounting expenses, or any other costs beyond what is neces-  
2 sary to terminate the nuclear regulatory commission license.

3 f. "Licensee" means the holder of the nuclear regulatory commission  
4 license for the retiring facility as of the date of any activity speci-  
5 fied herein.

6 g. "Site" means the property on which the retiring facility sits.

7 h. "Site restoration" means all activities performed to prepare the  
8 site for reuse.

9 i. "Decommissioning trust fund" means the funds accumulated pursuant  
10 to nuclear regulatory commission regulations for the decommissioning of  
11 the retiring facility, from any source, including any interest received  
12 thereon.

13 j. "Comments" means official statements on proposed actions with  
14 regard to the retiring facility, filed with the nuclear regulatory  
15 commission or other government entity according to all applicable regu-  
16 lations.

17 k. "Spent nuclear fuel" means any fuel rods and/or fuel assemblies  
18 that have been installed in the retiring facility's reactor core at any  
19 time.

20 l. "Community member" means any individual residing in this state  
21 within fifty miles of the retiring facility.

22 2. Creation of New York state decommissioning oversight board or  
23 boards (each a "NYSDOB" or "board").

24 a. A New York state decommissioning oversight board shall be estab-  
25 lished within the department for a retiring facility in the state within  
26 one month after the facility's closure is noticed to the nuclear regula-  
27 tory commission and shall extend until: (i) the facility's decommission-  
28 ing period is completed; (ii) all site restoration is completed and the  
29 site is released by all governmental authorities for reuse; and (iii)  
30 all spent nuclear fuel has been removed from the site. For any retiring  
31 facility that notified the nuclear regulatory commission of its perma-  
32 nent closure in the five years prior to the enactment of this law, a  
33 NYSDOB shall be established as expeditiously as possible.

34 b. The board shall help coordinate the efforts of state agencies'  
35 oversight of the decommissioning activities to ensure the retiring  
36 facility is in compliance with all state and federal regulations and  
37 make reports and recommendations to state and federal officials, as  
38 needed. Additionally, the board shall observe the disbursement of the  
39 retiring facility's decommissioning trust fund, facilitate public  
40 involvement and transparency throughout the decommissioning period, act  
41 as a forum to both disseminate information and solicit input from the  
42 public, and observe any other aspects of decommissioning activities, and  
43 site restoration, to the full extent allowed by law.

44 c. Eleven members collectively known as "agency members" shall serve  
45 on the board and will consist of: the chief executive officer of the  
46 department, the secretary of state, the commissioner of environmental  
47 conservation, the commissioner of health, the director of the office of  
48 emergency management, the state comptroller, the attorney general, the  
49 president of the New York state energy research and development authori-  
50 ty, the commissioner of labor, the president and chief executive officer  
51 of the power authority of the state of New York, and the commissioner of  
52 the division of homeland security and emergency services, or their  
53 designees.

54 d. The governor shall appoint six members and the temporary president  
55 of the senate and the speaker of the assembly shall each appoint two

1 members ("appointed members"). Preference shall be given to the follow-  
2 ing individuals:

3 (i) Community members who have demonstrated active engagement and have  
4 experience researching and advocating about issues related to the facil-  
5 ity;

6 (ii) Individuals representing labor unions whose members were employed  
7 at the applicable facility;

8 (iii) Individuals representing environmental organizations;

9 (iv) Individuals representing environmental justice communities asso-  
10 ciated with the facility;

11 (v) Individuals with scientific or technical background relevant to  
12 nuclear power plant decommissioning or engineering;

13 (vi) Individuals engaged in local emergency planning; and

14 (vii) Local elected officials.

15 e. There are no term limits for the agency members, who shall serve as  
16 ex officio members. In order to help preserve continuity and organiza-  
17 tional memory, appointed members shall serve staggered terms of three  
18 years. If any appointed member position becomes vacant, another member  
19 shall be appointed to fill the unexpired term within ninety days of the  
20 date of the vacancy. After two terms, each appointed member shall cycle  
21 off and be replaced by another appointee; former appointed members may  
22 return after a break of at least one year.

23 f. No person who holds any relationship to or financial interest in  
24 any company with an ownership or other financial interest in any nuclear  
25 plant in the state, including related or parent companies, subsidiaries,  
26 contractors, agents, shareholders, or others (as determined by the  
27 state) may be appointed to the board.

28 g. The board shall select a vice chair from among its members. The  
29 chief executive officer of the department shall serve as the chair. In  
30 the event of the unavailability or incapacity of the chair, the vice  
31 chair shall assume the duties of the chair.

32 3. Board meetings. The board shall meet a minimum of four times each  
33 year at the call of the chair. However, once decommissioning activities  
34 are complete the board may reduce the number of meetings to a minimum of  
35 once per year.

36 a. The chair shall provide notice to all members and to the public at  
37 least two weeks prior to any regular meeting.

38 b. Meetings shall be held in Albany or at a location that is accessi-  
39 ble to community members, and proximate to an applicable facility.

40 c. In response to a situation in which the physical integrity of the  
41 facility and/or nuclear waste storage may have been compromised and/or  
42 damaged, an emergency meeting may be called with at least twenty-four  
43 hours notice.

44 d. A majority of the members of the board shall constitute a quorum.

45 e. The board shall act only by a vote of a majority of the members.

46 f. All regular meetings shall be open to the public and shall include  
47 an opportunity for public comment. Meetings shall be recorded and shall  
48 be made available electronically for public viewing.

49 g. The board shall be subject to article seven of the public officers  
50 law.

51 4. Powers and duties of the board. The board shall have the following  
52 powers and duties:

53 a. The board's functions shall be to: (i) advise the governor, the  
54 legislature, the agencies of the state, and the public on issues related  
55 to the decommissioning of nuclear facilities, including but not limited  
56 to: short-term and long-term radioactive waste storage; site restora-

tion and future use of the site; maintenance of emergency planning and response funds before, during, and after decommissioning; use of the decommissioning trust fund; and plans for ongoing oversight of the facility for as long as spent fuel or greater than class C waste remain at the site; and (ii) assess whether all licensee requirements are fulfilled.

b. The board shall produce an annual report including the status of decommissioning; effects on the surrounding communities; and any recommendations for state action in regard to any post-shutdown decommissioning activities report, license amendment request or requests, regulatory exemption request and/or other modification or amendment relating to the retiring facility.

c. When a post-shutdown decommissioning activities report or other decommissioning plan for the retiring facility is produced by the licensee pursuant to 10 CFR 50.82(a)(4), the board shall:

(i) Review the decommissioning plans and/or the post-shutdown decommissioning activities report;

(ii) Alert the public to such action and provide public access to the plans and/or post-shutdown decommissioning activities report;

(iii) Solicit and provide a forum for public comment on such plans and/or post-shutdown decommissioning activities report;

(iv) Develop recommendations regarding the proposed plan and/or post-shutdown decommissioning activities report, incorporating input from the public as appropriate;

(v) Compile comments incorporating the board's recommendations and public comment;

(vi) Submit such comments to the nuclear regulatory commission during the applicable comment period, as necessary, and provide a copy of the comments to the governor, the legislature, applicable state agencies, and the public.

d. When any application is made to the nuclear regulatory commission to transfer or modify the facility's commercial power reactor license, including, but not limited to, license amendment request or requests or license termination or transfer plans, or when an application is made to the nuclear regulatory commission for any other permit or permits related to the site, such as, but not limited to, exemptions from federal regulations and/or the establishment or transfer of an independent spent fuel storage installation, the board shall:

(i) Review such applications;

(ii) Alert the public to such applications and provide public access to the application materials;

(iii) Solicit and provide a forum for public comment on such plans;

(iv) Develop recommendations regarding the proposed applications, incorporating input from the public as appropriate;

(v) Compile comments incorporating the board's recommendations and public comment;

(vi) Submit such comments to the nuclear regulatory commission during the applicable comment period, as necessary, and provide a copy of the report to the governor, the state legislature, applicable state agencies, and the public.

e. The board may, as it deems appropriate, review plans or permits made available to it by a state agency, solicit public comment, and produce comments or recommendations to the state agency.

f. The board shall periodically review reports, including the annual audited financial statements, on the decommissioning trust fund and other funds associated with decommissioning of or site restoration at

1 the facility, including fund balances, expenditures made, and reimburse-  
2 ments received to ensure that such funds are spent according to all  
3 applicable laws and that no shortfalls are anticipated that might affect  
4 state or local governments.

5 5. Licensee requirements.

6 a. The licensee shall provide the following information to the board  
7 as soon as possible:

8 (i) A copy of any communications between the licensee and the nuclear  
9 regulatory commission regarding:

10 (1) the post-shutdown decommissioning activities report for the retir-  
11 ing facility,

12 (2) status reports on the cleanup of the existing radioactive contam-  
13 ination on the site,

14 (3) the establishment of or modifications to spent fuel storage  
15 installation on the site of the retiring facility,

16 (4) a proposed license transfer or modification for the facility,  
17 and/or for the storage of spent fuel at the facility.

18 (ii) Annual audited financial statements, prepared in compliance with  
19 generally accepted auditing standards adopted by the public company  
20 accounting oversight board, for the funds held in the decommissioning  
21 trust fund of the facility, including an independent analysis of whether  
22 the expenditures in the financial year covered were consistent with  
23 nuclear regulatory commission regulatory requirements.

24 (iii) Information requested by the board that is in the possession of  
25 the licensee and relates to site reuse; the decommissioning trust fund;  
26 the relevant economic interests of the state or municipalities; or is  
27 otherwise reasonably required to allow the board to complete its duties.

28 b. The licensee shall not use decommissioning trust funds except for  
29 decommissioning activities as defined on the effective date of this  
30 section and consistent with federal law.

31 6. Board members' expenses. Board members shall receive no compen-  
32 sation for their services but may be reimbursed for actual and necessary  
33 expenses incurred in the performance of their duties.

34 7. Administration of the board. a. The department shall provide admin-  
35 istrative support.

36 b. The board may contract for the services of technical or other  
37 consultants to produce, compile, and/or analyze data relating to the  
38 facility and to advise the board.

39 8. Enforcement. Whenever the attorney general finds that a licensee is  
40 in violation of any of the requirements listed in subdivision five of  
41 this section he or she may issue an order requiring the licensee to  
42 comply or bring civil action to ensure compliance. The board may provide  
43 any relevant information to the attorney general.

44 9. Severability clause. If any provision of this law or its applica-  
45 tion to any person or circumstance is held invalid, the invalidity shall  
46 not affect other provisions or applications of this law which can be  
47 given effect without the invalid provision or application, and to this  
48 end the provisions of this law are severable.

49 § 2. This act shall take effect on the ninetieth day after it shall  
50 have become a law.