

# STATE OF NEW YORK

10236--A

## IN ASSEMBLY

March 27, 2020

Introduced by M. of A. GALEF, BUCHWALD, SEAWRIGHT, HUNTER, COLTON, ABINANTI, THIELE, DINOWITZ, JAFFEE, CARROLL, FAHY, GOTTFRIED, McMAHON, CAHILL, MOSLEY, MONTESANO, B. MILLER -- read once and referred to the Committee on Energy -- 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:

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

§ 174. New York state decommissioning oversight boards. 1. Definitions. The following terms shall have the following meanings:

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

b. "Retiring facility" or "facility" means a nuclear power plant in the state whose permanent closure has been noticed to the nuclear regulatory commission.

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

d. "Reuse" means the unrestricted use of the site subject to applicable nuclear regulatory commission regulations, and federal, state, and local laws.

e. "Decommissioning activities" means activities at the retiring facility to reduce residual radioactivity to a level that permits release of the property for reuse and the termination of the nuclear regulatory commission license but does not include activities associated with irradiated fuel management and site restoration activities, legal expenses, accounting expenses, or any other costs beyond what is necessary to terminate the nuclear regulatory commission license.

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

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

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

5 h. "Site restoration" means all activities performed to prepare the  
6 site for reuse.

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

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

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

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

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

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

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

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

52 d. The governor shall appoint six members and the temporary president  
53 of the senate and the speaker of the assembly shall each appoint two  
54 members ("appointed members"). Preference shall be given to the follow-  
55 ing individuals:

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

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

6 (iii) Individuals representing environmental organizations;

7 (iv) Individuals representing environmental justice communities asso-  
8 ciated with the facility;

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

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

12 (vii) Local elected officials.

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

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

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

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

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

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

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

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

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

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

47 g. The board shall be subject to article seven of the public officers  
48 law.

49 4. Powers and duties of the board. The board shall have the following  
50 powers and duties:

51 a. The board's functions shall be to: (i) advise the governor, the  
52 legislature, the agencies of the state, and the public on issues related  
53 to the decommissioning of nuclear facilities, including but not limited  
54 to: short-term and long-term radioactive waste storage; site restora-  
55 tion and future use of the site; maintenance of emergency planning and  
56 response funds before, during, and after decommissioning; use of the

1 decommissioning trust fund; and plans for ongoing oversight of the  
2 facility for as long as spent fuel or greater than class C waste remain  
3 at the site; and (ii) assess whether all licensee requirements are  
4 fulfilled.

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

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

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

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

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

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

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

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

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

37 (i) Review such applications;

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

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

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

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

45 (vi) Submit such comments to the nuclear regulatory commission during  
46 the applicable comment period, as necessary, and provide a copy of the  
47 report to the governor, the state legislature, applicable state agen-  
48 cies, and the public.

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

52 f. The board shall periodically review reports, including the annual  
53 audited financial statements, on the decommissioning trust fund and  
54 other funds associated with decommissioning of or site restoration at  
55 the facility, including fund balances, expenditures made, and reimburse-  
56 ments received to ensure that such funds are spent according to all

1 applicable laws and that no shortfalls are anticipated that might affect  
2 state or local governments.

3 5. Licensee requirements.

4 a. The licensee shall provide the following information to the board  
5 as soon as possible:

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

8 (1) the post-shutdown decommissioning activities report for the retir-  
9 ing facility,

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

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

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

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

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

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

29 6. Remaining funds. Any funds remaining in the decommissioning trust  
30 fund at the end of the decommissioning period shall revert to NYSDORA to  
31 be spent on renewable energy systems, as defined in section sixty-six-p  
32 of this chapter, to benefit the service areas within which ratepayers  
33 contributed to the decommissioning trust fund.

34 7. Board members' expenses. Board members shall receive no compen-  
35 sation for their services but may be reimbursed for actual and necessary  
36 expenses incurred in the performance of their duties.

37 8. Administration of the board. a. The department shall provide admin-  
38 istrative support.

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

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

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

52 § 2. This act shall take effect on the one hundred eightieth day after  
53 it shall have become a law.