STATE OF NEW YORK

10236--B

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, JACOBSON, PAULIN, BARRON, DICKENS, SAYEGH, ORTIZ, L. ROSENTHAL, ENGLEBRIGHT, WALLACE -- read once and referred to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- 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

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

LBD16010-11-0

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.

f. "Licensee" means the holder of the nuclear regulatory commission license for the retiring facility as of the date of any activity specified herein.

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

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

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

j. "Comments" means official statements on proposed actions with regard to the retiring facility, filed with the nuclear regulatory commission or other government entity according to all applicable regulations.

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

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

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

a. A New York state decommissioning oversight board shall be established within the department for a retiring facility in the state within one month after the facility's closure is noticed to the nuclear regulatory commission and shall extend until: (i) the facility's decommissioning period is completed; (ii) all site restoration is completed and the site is released by all governmental authorities for reuse; and (iii) all spent nuclear fuel has been removed from the site. For any retiring facility that notified the nuclear regulatory commission of its permanent closure in the five years prior to the enactment of this law, a NYSDOB shall be established as expeditiously as possible.

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

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

d. The governor shall appoint six members and the temporary president of the senate and the speaker of the assembly shall each appoint two members ("appointed members"). Preference shall be given to the following individuals:

(i) Community members who have demonstrated active engagement and have experience researching and advocating about issues related to the facility;

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

(iii) Individuals representing environmental organizations;

(iv) Individuals representing environmental justice communities associated with the facility;

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

(vi) Individuals engaged in local emergency planning; and

(vii) Local elected officials.

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

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

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

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

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

b. Meetings shall be held in Albany or at a location that is accessible to community members, and proximate to an applicable facility.

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

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

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

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

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

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

a. The board's functions shall be to: (i) advise the governor, the legislature, the agencies of the state, and the public on issues related

to the decommissioning of nuclear facilities, including but not limited to: short-term and long-term radioactive waste storage; site restoration 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 the facility, including fund balances, expenditures made, and reimbursements received to ensure that such funds are spent according to all applicable laws and that no shortfalls are anticipated that might affect state or local governments.

5. Licensee requirements.

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

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

(1) the post-shutdown decommissioning activities report for the retiring facility,

(2) status reports on the cleanup of the existing radioactive contamination on the site,

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

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

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

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

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

6. Board members' expenses. Board members shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

7. Administration of the board. a. The department shall provide administrative support.

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

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

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

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