

STATE OF NEW YORK

5503

2019-2020 Regular Sessions

IN ASSEMBLY

February 13, 2019

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~~

~~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 to such department any rate proposal irrespective of its effect on revenues.

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 in each ~~[in the]~~ county ~~[of Suffolk and the county of Nassau]~~ within the service area upon at least thirty days notice to the public. The authority and service provider shall provide to their customers advance written notice of the date and place of any public hearings concerning proposed increases in rates.

4. Any recommendations 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 board shall implement such recommendations as part of its final rate plan and 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.]~~ The board shall not approve a final rate plan until it holds a public hearing in each county within the service area upon at least thirty days notice to the public. At such hearing, the department of public service shall present the basis for its recommendations. Within ninety days of the conclusion of the public hearing, the board shall render a final determination on the rate proposal. In making a final determination, the board shall protect the economic interests of its ratepayers and the service area. The board shall also consider the recommendations of the department and criteria in paragraph (a) of subdivision three of section three-b of the public service law. The board shall not be authorized to approve any rate 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.